reason

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Police, Law and the Courts

from Murray Rothbard's forthcoming book, For A New Liberty

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Cover and artwork (p. 5) by James Garrison

editorial introduction

The Government Controversy Revisited

One of the most exciting aspects of libertarianism is the opportunity to develop analyses and theory along hitherto uncharted areas. Although libertarians are in agreement on certain fundamentals, the philosophy of libertarianism has not been exposed to systematic and rigorous analysis as to many of its ramifications.

As we observed in the introduction to REASON*'s interview with Murray Rothbard and Leonard Liggio last month, libertarians agree on fundamental premises which recognize the right of an individual to his life and property, and the right to be free from the initiation of force. Within the libertarian movement today, there exist various distinct schools of thought as to the proper application of these premises. Perhaps one of the most interesting areas of disagreement among libertarians involves the question whether government has a proper role in providing defense, police protection and a court system, or whether even a government limited to only these functions is inherently coercive and antilibertarian.*

In our March 1972 issue, REASON *presented a Special Supplement on Anarcho-Capitalism, containing three articles addressing the concept of anarcho-capitalism, which holds that all goods and services should be provided by the free market, including courts, police protection and defense. Originally,* REASON *had intended to present both pro and con views in the Anarcho-Capitalism Supplement. However, articles which we had planned to include in the Supplement in support of anarcho-capitalism were not received. As a result of the one-sided presentation,* REASON *has been both praised and attacked from many quarters.*

At this time, we would like our readers to be aware that REASON *takes no editorial stand either in favor of or against the anarcho-capitalist position. As we stated last March, we consider the subject to be an important one, deserving of serious discussion. We consider it essential that all libertarians be united on the objective of eliminating coercion as to all areas of human rights, but from a tactical standpoint, the controversy concerning governmental vs. a private system of courts and police does not seem necessary to resolve as a matter of the first priority. At the same time, it is pertinent to observe that the widespread cynicism and distrust of government and government officials, together with the costly, inefficient and nonresponsive performance of the state in the area of police protection and judicial services make it desirable for individuals to search for new approaches, entirely aside from any commitment to libertarian premises.*

The ongoing debate between libertarians who espouse limited government and those who advocate no government will be greatly enriched by the publication of what must surely be the definitive statement of the case for free market courts and police: Murray Rothbard's lead article in this issue. Rothbard's article is based on a chapter from his forthcoming book, FOR A NEW LIBERTY, *which will be published this spring by The MacMillan Company.*

In his article, Rothbard shows how the free market could provide competitive defense agencies, in lieu of utilizing the state, to provide necessary defense against violent invasion of person and property. Rothbard's position is founded on his view of an inherent incompatibility between the coercive nature of government vis-a-vis the individual and his right to life and liberty. Although Rothbard recognises the impossibility of presently attempting to blueprint a system of police and judicial service in the hypothetical libertarian society, he does focus in detail on practical aspects of the problem, suggesting how a totally free market could satisfactorily respond to demand for necessary protective services. Rothbard's article presents immensely valuable insights for future libertarian legal theoreticians in the quest to spell out the outlines of a libertarian society. The need to focus on the problems involved in developing and implementing a libertarian legal code is a task of the highest priority for those that seek to eliminate the presence of the State in its entirety. With the publication of Rothbard's analysis, significant guidance is offered for those concerned with confronting this task.

Also bearing on the theme of government/no government are this month's articles by Adam Reed and Carl Watner. Watner focuses on "Lysander Spooner: Libertarian Pioneer," and sets forth Spooner's innovative attacks on the concept of representative government. Reed, in his article, "Resolving Disputes in a Free Society," attempts to reconcile the conflict between anarcho-capitalists and supporters of limited government by focusing on approaches to resolve civil disputes. He suggests that the use of governments with exclusive territorial jurisdiction, which are selected by the owners of territory in which the government would have jurisdiction, would be a means of resolving disputes without the initiation of force.

No doubt this issue of REASON *will provoke as much controversy as our Supplement a year ago. We expect that our letters to the editor will provide lively debate on the subject for months to come.*

——**Manuel S. Klausner**

Free Market

Police, Courts, and Law

MURRAY N ROTHBARD

Because the market and private enterprise exist, most people can readily envision a free market in most goods and services. Probably the most difficult single area to grasp, however, is the abolition of government operation in the service of protection: police, the courts, etc.—the area encompassing defense of persons and property against attack or invasion. How could private enterprise and the free market possibly provide *such* service? How could police, legal systems, judicial services, law enforcement, prisons—how could these be provided in a free market? Elsewhere, it has been demonstrated how a great deal of police protection, at the least, could be supplied by the various owners of streets and land areas.[1] But we now need to examine the entire area systematically.

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In the first place, there is a common fallacy, held even by most advocates of *laissez-faire,* that the government must supply "police protection," as if police protection were a single, absolute entity, a fixed quantity of something which the government supplies to all. But in actual fact, there is no absolute commodity called "police protection" any more than there is an absolute single commodity called "food" or "shelter." It is true that everyone pays taxes for a seemingly "fixed quantity" of protection, but this is simply a myth. In actual fact, there are almost infinite degrees of all sorts of protection. For any given person or business, the police can provide everything from a policeman on the beat who patrols once a night, to two policemen patrolling constantly on each block, to cruising patrol cars, to one or even several round-the-clock personal bodyguards. Furthermore, there are many other decisions that the police must make, the complexity of which become evident as soon as we look beneath the veil of the myth of absolute "protection." How shall the police allocate their funds which are, of course, always limited as are the funds of all other individuals, organizations, and agencies? How much shall the police invest in electronic equipment? fingerprinting equipment? detectives as against uniformed police? patrol cars as against foot police, etc.?

HOW MUCH PROTECTION?

The point is that the government has no rational way whatsoever to make these allocations. The government only knows that it has a limited budget. Its allocations of funds are then subject to the full play of politics, boondoggling, and bureaucratic inefficiency, with no indication at all as to whether the police department is serving the consumers in a way responsive to their desires or whether it is doing so efficiently. The situation would be different if police services were supplied on a free, competitive market. In that case, consumers would pay for whatever degree of protection they wish to purchase. The consumers who just want to see a policeman once in a while would pay less than those who want continuous patrolling, and far less than those who demand twenty-four-hour bodyguard service. On the free market, protection would be supplied in proportion and in whatever way that the consumers wish to pay for it. A drive for efficiency would be insured, as it always is on the market, by the compulsion to make profits and avoid losses, and thereby to keep costs low and to serve the highest demands of the consumers. Any police firm that suffers from gross inefficiency would soon go bankrupt and disappear.

Murray Rothbard is Professor of Economics at the Polytechnic Institute of Brooklyn. He received his Ph. D. in Economics from Columbia University and is the author of many books and articles, including a two-volume treatise, MAN, ECONOMY AND STATE. *He and historian Leonard Liggio were the subjects of an exclusive* REASON *interview in last month's issue, entitled "The New Isolationism."*

One big problem that a government police force must always face is: what laws *really* to enforce? Police departments are theoretically faced with the absolute injunction, "enforce all laws," but in practice a limited budget forces them to allocate their personnel and equipment to the most urgent crimes. But their absolute dictum pursues them and works against a rational allocation of resources. On the free market, what would be enforced is whatever the customers are willing to pay for. Suppose, for example, that Mr. Jones has a precious gem which he believes might soon be stolen. He can ask, and pay for, round-the-clock police protection at whatever strength he may wish to work out with the police company. He might, on the other hand, also have a private road on his estate which he doesn't want many people to travel on—but he might not *care* very much about trespassers on that road. In that case, he won't devote any police resources to protecting the road. As on the market in general, it is up to the consumer—and since all of us are consumers this means each person individually decides how much and what kind of protection he wants and is willing to buy.

All that we have said elsewhere[2] about landowners' police applies to private police in general. Free-market police would not only be efficient, they would have a strong incentive to be courteous and to refrain from brutality against either their clients or their clients' friends or customers. A private Central Park would be guarded efficiently in order to maximize park revenue, rather than have a prohibitive curfew imposed on innocent—and paying—customers. A free market in police would reward efficient and courteous police protection to customers and penalize any falling off from this standard. No longer would there be the current disjunction between service and payment inherent in all government operations, a disjunction which means that police, like all other government agencies, acquire their revenue, not voluntarily and competitively from consumers, but from the taxpayers coercively.

DEMAND FOR PRIVATE PROTECTION

In fact, as government police have become increasingly inefficient, consumers have been turning more and more to private forms of protection. We have elsewhere mentioned block or neighborhood protection.[3] There are also private guards, insurance companies, private detectives, and such increasingly sophisticated equipment as safes, locks, and closed circuit TV and burglar alarms. The President's Commission on Law Enforcement and the Administration of Justice estimated in 1969 that government police

"Every reader of detective fiction knows that private insurance detectives are far more efficient than the police in recovering stolen property."

cost the American public $2.8 billion a year, while it spends $1.35 billion on private protection service and another $200 million on equipment, so that *private protection expenses amounted to over half the outlay on government police.* These figures should give pause to those credulous folk who believe that police protection is somehow, by some mystic right or power, necessarily and forevermore an attribute of State sovereignty.[4]

Every reader of detective fiction knows that private insurance detectives are far more efficient than the police in recovering stolen property. Not only is the insurance company impelled by economics to serve the consumer—and thereby try to avoid paying benefits—but the major focus of the insurance company is very different from that of the police. The police, standing as they do for a mythical "society," are primarily interested in catching and punishing the criminal; restoring the stolen loot to the victim is strictly secondary. To the insurance company and its detectives, on the other hand, the prime concern is recovery of the loot, and apprehension and punishment of the criminal is secondary to the prime purpose of aiding the victim of crime. Here we see again the difference between a private firm impelled to serve the customer-victim of crime and the public police, which is under no such economic compulsion.

We cannot blueprint a market that still exists only as an hypothesis; but it is reasonable to believe that *police service in the libertarian society would be supplied by the landowners or by insurance companies.* Since insurance companies would be paying benefits to victims of crime, it is highly likely that they would supply police service as a means of keeping down crime and hence their payment of benefits. It is certainly likely in any case that police service would be paid for in regular monthly premiums, with the police agency—whether insurance company or not—called on whenever needed.

This supplies what should be the first simple answer to a typical nightmare question of people who first hear about the idea of a totally private police: "Why, that means that if you're attacked or robbed you have to rush over to a policeman and start dickering on how much it will cost to defend you." A moment's reflection should show that no service is supplied in this way on the free market. Obviously, the person who wants to be protected by Agency A or Insurance Company B will pay regular premiums rather than wait to be attacked before buying protection. "But suppose an emergency occurs and a Company A policeman sees someone being mugged; will he stop to ask if the victim has bought insurance from Company A?" In the first place, this sort of street crime will be taken care of, as we show in our discussion of street protection in *FOR A NEW LIBERTY,* by the police hired by whoever owns the street in question. But what of the unlikely case that a neighborhood does not have street police, and a policeman of Company A happens to see someone being attacked? Will he rush to the victim's defense? That, of course, would be up to Company A, but it is scarcely conceivable that private police companies would not cultivate goodwill by making it a policy to give free aid to victims in emergency situations and perhaps ask the rescued victim for a voluntary donation afterward. In the case of a homeowner being robbed or attacked, then of course he will call on whichever police company he has been using. He will call Police Company A rather than "the police" which he calls upon now.

COMPETING POLICE PROTECTION COMPANIES?

Competition insures efficiency, low price, and high quality, and there is no reason to assume *a priori,* as many people do, that there is something divinely ordained about having only *one* police agency in a given geographical area. Economists have often claimed that the production of certain goods or services is a "natural monopoly," so that more than one private agency could not long survive in a given area. Perhaps, although only a totally free market could decide the matter once and for all. Only the market can decide what and how many firms, and of what size and quality, can survive in active competition. But there is no reason to suppose in advance that police protection is a "natural monopoly." After all, insurance companies are not; and if we can have Metropolitan, Equitable, Prudential, etc., insurance companies coexisting side by side, why not Metropolitan, Equitable, and Prudential police protection companies? Gustave de Molinari, the nineteenth-century French free-market economist, was the first person in history to contemplate and advocate a free market for police protection. Molinari estimated that there would eventually turn out to be several private police agencies side by side in the cities, and one private agency in each rural area. Perhaps—but we must realize that modern technology makes much more feasible branch offices of large urban firms in even the most remote rural areas. A person living in a small village in Wyoming, therefore, could employ the services of a local protection company, *or* he might use a nearby branch office of the Metropolitan Protection Company.

WHO PROTECTS THE POOR?

"But how could a poor person afford private protection that he would have to pay for instead of getting free protection, as he does now?" There are several important answers to this question, one of the most common criticisms of the idea of totally private police protection. One is: that this problem of course applies to *any* commodity or service in the libertarian society, not just the police. But is protection necessary? Perhaps, but then so is food of many different kinds, clothing, shelter, etc. Surely these are at least as vital if not more so than police protection, and yet almost nobody says that *therefore* the government must nationalize food, clothing, shelter, etc. and supply these free as a compulsory monopoly. Very poor people would be supplied, in general, by private charity, as seen in our chapter on welfare in *FOR A NEW LIBERTY.* Furthermore, in the specific case of police there would undoubtedly be ways of voluntarily supplying free police protection to the indigent—either by the police companies themselves for goodwill (as hospitals and doctors do now) or by special "police aid" societies that would do work similar to "legal aid" societies today. (Legal aid societies voluntarily supply free legal counsel to the indigent in trouble with the authorities.)

There are important supplementary considerations. First of all, police service is *not* "free"; it is paid for by the taxpayer, and the taxpayer is very often the poor person himself. He may very well be paying more in taxes for police now than he would in fees to private, and far more efficient, police companies. Furthermore, the police companies would be tapping a mass market; with the economies of such a large-scale market, police protection would undoubtedly be much cheaper. No police company would wish to price itself out of a large chunk of its market, and the cost of protection would be no more prohibitively expensive than, say, the cost of insurance today. (In fact, it would tend to be much cheaper than current insurance, because the insurance industry today is heavily regulated by government to keep out low-cost competition.)

CLASHES BETWEEN RIVAL AGENCIES

There is a final nightmare which most people who have contemplated private protection agencies consider to be decisive in rejecting such a concept. Wouldn't they always be clashing? Wouldn't "anarchy" break out, with perpetual conflicts between police forces as one person calls in "his" police while a rival calls in "his"?

There are several levels of answers to this crucial question. In the first place, since there would be no overall State, no central or even single local government, we would *at least* be spared the horror of inter-State wars, with their plethora of massive, superdestructive, and now nuclear, weapons. As we look back through history, isn't it painfully clear that the number of people killed in isolated neighborhood "rumbles" or conflicts is as nothing to the total mass devastation of inter-State wars? There are good reasons for this. To avoid emotionalism, let us take two hypothetical countries: "Ruritania" and "Walldavia." If both Ruritania and Walldavia were dissolved into a libertarian society, with no government and innumerable private individuals, firms, and police agencies, the only clashes that *could* break out would be local, and the weaponry would necessarily be strictly limited in scope and devastation. Suppose that in a Ruritanian city two police agencies clash and start shooting it out. At worst, they could *not* use mass bombing or nuclear destruction or germ warfare, since they themselves would be blown up in the holocaust. It is the slicing off of territorial areas into single, governmental monopolies that leads to mass destruction—for *then* if the single monopoly government of Walldavia confronts its ancient rival, the government of Ruritania, each can wield weapons of mass destruction and even nuclear warfare because it will be the "other guy" and the "other country" that they will hurt. Furthermore, now that every person is a subject of a monopoly government, in the eyes of every other government he becomes irretrievably *identified* with "his" government. The citizen of France is identified with "his" government, and therefore if another government attacks France, it will attack the citizenry as well as the government of France. But if Company A battles with Company B, the *most* that can happen is that the respective customers of each company may be dragged into the battle—but *no one else.* It should be evident, then, that *even* if the worst happened, and a libertarian world would indeed become a world of "anarchy," we would *still* be much better off than we are now, at the mercy of rampant, "anarchic" nation-states, each possessing a fearsome monopoly of weapons of mass destruction. We must never forget that we are all living, and always have lived, in a world of "international anarchy," in a world of coercive nation-states unchecked by any overall world government, and there is no prospect of this situation changing.

A libertarian world, then, even if anarchic, would *still* not suffer the brutal wars, the mass devastation, that our State-ridden world has suffered for centuries. Even if local police clash continually, there would be no more Dresdens, no more Hiroshimas.

CHAOTIC "ANARCHY" BAD FOR BUSINESS

But there is far more to be said. We should never concede that this local "anarchy" would be likely to occur. Let us separate the problem of police clashes into two distinct and different parts: honest disagree-

"How would courts be financed in a free society? There are many possibilities."

ments, and the attempt of one or more police forces to become "outlaws" and to extract funds or impose their rule by coercion. Let us assume for a moment that the police forces will be honest, and that they are only riven by honest clashes of opinion; we will set aside for a while the problem of outlaw police. Surely one of the very important aspects of protection service that the police can offer their respective customers is quiet protection. Every consumer, every buyer of police protection, would wish above all for protection that is efficient and quiet, with no conflicts or disturbances. Every police agency would be fully aware of this vital fact. To assume that police would continually clash and battle with each other is absurd, for it ignores the devastating effect that this chaotic "anarchy" would have on the business of all of the police companies. To put it bluntly, such wars and conflicts would be bad—very bad—for business. Therefore, on the free market, the police agencies would all see to it that there would be no clashes between them, and that all conflicts of opinion would be ironed out in private courts, decided by private judges or arbitrators.

To get more specific: in the first place, as we have said, clashes would be minimal because the street owner would have his guards, the storekeeper his, the landlord his, and the home owner his own police company. Realistically, in the everyday world, there would be little room for direct clashes between police agencies. But suppose, as will sometimes occur, two neighboring home owners get into a fight, each accuses the other of initiating assault or violence, and each calls on his own police company, should they happen to subscribe to different companies. What then? Again, it would be pointless and economically as well as physically self-destructive for the two police companies to start shooting it out. Instead, every police company, to remain in business at all, would announce as a *vital part* of its service, the use of *private courts or arbitrators* to decide who is in the wrong.

PROVIDING JUDICIAL SERVICE

Suppose, then, that the judge or arbitrator decides that Smith was in the wrong in a dispute, and that he aggressed against Jones. If Smith accepts the verdict, then whatever damages or punishment are levied, there is no problem for the theory of libertarian protection. But what if he does *not* accept it? Or suppose another example: Jones is robbed. He sets his police company to do detective work in trying to track down the criminal. The company decides that a certain Brown is the criminal. Then what? If Brown acknowledges his guilt, then again there is no problem and judicial punishment proceeds, centering on forcing the criminal to make restitution to the victim. But, again, what if Brown denies his guilt?

These cases take us out of the realm of police protection and into another vital area of protection: *judicial* service, i.e., the provision, in accordance with generally accepted procedures, of a method of trying as best as one can to determine *who* is the criminal, or *who* is the breaker of contracts, in any sort of crime or dispute. Many people, even those who acknowledge that there could be privately competitive police service supplied on a free market, balk at the idea of totally private courts. How in the world could *courts* be private? How would courts employ force in a world without government? Wouldn't eternal conflicts and "anarchy" *then* ensue?

In the first place, the monopoly courts of government are subject to the same grievous problems, inefficiencies, and contempt for the consumer as any other government operation. We all know that judges, for example, are *not* selected according to their wisdom, or probity, or efficiency in serving the consumer, but are political hacks chosen by the political process. Furthermore, the courts are monopolies: if, for example, the courts in some town or city should become corrupt, venal, oppressive, or inefficient the citizen at present has no recourse. The aggrieved citizen of Deep Falls, Wyoming, must be governed by the local Wyoming court or not at all. In a libertarian society, there would be many courts, many judges to whom he could turn. Again, there is no reason to assume a "natural monopoly" of judicial wisdom. The Deep Falls citizen could, for example, call upon the local branch of the Prudential Judicial Company.

How would courts be financed in a free society? There are many possibilities. Possibly, each individual would subscribe to a court service, paying a monthly premium, and then calling upon the court if he is in need. Or, since courts will probably be needed much less frequently than policemen, he may pay a fee whenever he chooses to use the court, with the criminal or contract-breaker eventually recompensing the victim or plaintiff. Or, in still a third possibility, the courts may be hired by the police agencies to settle disputes, *or* there may even be "vertically integrated" firms supplying *both* police and judicial service: the Prudential Insurance Company might have a police and a judicial division. Only the market will be able to decide which of these methods will be most appropriate.

GROWTH OF PRIVATE ARBITRATION

We should all be more familiar with the increasing use of private arbitration, even in our present society. The government courts have become so clogged, so inefficient, and wasteful that more and more parties to disputes are turning to private arbitrators as a cheaper and far less time-consuming way of settling their disputes. In recent years, private arbitration has become a growing and highly successful profession. Being voluntary, furthermore, the rules of arbitration can be decided rapidly by the parties themselves, without the need for a ponderous, complex legal framework applicable to all citizens. Arbitration therefore permits judgments to be made by people expert in the trade or occupation concerned. Currently, the American Arbitration Association, whose motto is "The Handclasp is Mightier than the Fist," has 25 regional offices throughout the country, with 23,000 arbitrators. In 1969, the Association conducted over 22,000 arbitrations. In addition, the insurance companies adjust over 50,000 claims a year through voluntary arbitration. There is also a growing and successful use of private arbitrators in automobile accident claim cases.

It might be protested that, while performing an ever greater proportion of judicial functions, the private arbitrators' decisions are still enforced by the courts, so that once the disputing parties agree on an arbitrator, his decision becomes legally binding. This is true, but it was *not* the case before 1920, and the arbitration profession grew at as rapid a rate from 1900 to 1920 as it has since. In fact, the modern arbitration movement began in full force in England during the time of the American Civil War, with merchants increasingly using the "private courts" provided by voluntary arbitrators, even though the decisions were not legally binding. By 1900, voluntary arbitration began to take hold in the United States. In fact, in medieval England, the entire structure of merchant law, which was handled clumsily and inefficiently by the government's courts, grew up in private merchants' courts. The merchants' courts were purely voluntary arbitrators, and the decisions were not legally binding. How, then, were they successful?

The answer is that the merchants, in the Middle Ages and down to 1920, relied solely on ostracism and boycott by the other merchants in the area. In other words, should a merchant refuse to submit to arbitration or ignore a decision, the other merchants would publish this fact in the trade, and would refuse to deal with the recalcitrant merchant, bringing him quickly to heel. Woolridge mentions one medieval example:

> Merchants made their courts work simply by agreeing to abide by the results. The merchant who broke the understanding would not be sent to jail, to be sure, but neither would he long continue to be a merchant, for the compliance exacted by his fellows, and their power over his goods, proved if anything more effective than physical coercion. Take John of Horning, who made his living marketing wholesale quantities of fish. When John sold a lot of herring on the representation that it conformed to a three-barrel sample, but which, his fellow merchants found, was actually mixed with "sticklebacks and putrid herring," he made good the deficiency on pain of economic ostracism. [5]

In modern times, ostracism became even more effective, and it included the knowledge that anyone who ignored an arbitrator's award could never again avail himself of an arbitrator's services. Industrialist Owen D. Young, head of General Electric, indeed concluded that the moral censure of other businessmen was a far more effective sanction than legal enforcement. Nowadays, modern technology, computers, and credit ratings would make such nationwide ostracism even more effective than it has ever been in the past.

DEALING WITH CRIME

Even if purely voluntary arbitration is sufficient for commercial disputes, however, what of frankly criminal activities: the mugger, the rapist, the bank robber? In these cases, it must be admitted that ostracism would probably not be sufficient—even though it would also include, we must remember, refusal of private street owners to allow such criminals in their areas. For the criminal cases, then, courts and legal enforcement become necessary.

How, then, would the courts operate in the libertarian society? In particular, how could they *enforce* their decisions? In all their operations, furthermore, they must observe the critical libertarian rule that no physical force may be used against anyone who has not been convicted as a criminal—otherwise, the users of such force, whether police or courts, would be themselves liable to be convicted as aggressors if it turned out that the person they had used force against was innocent of crime. In contrast to statist systems, no policeman or judge could be granted special immunity to use coercion beyond what anyone else in society could use.

Let us now take the case we mentioned before. Mr. Jones is robbed, his hired detective agency decides that one Brown committed the crime, and Brown refuses to concede his guilt. What then? In the first place, we must recognize that there is at present no overall world court or world government enforcing its decrees? Yet while we live in a state of "international anarchy" there is little or no problem in disputes between private citizens of two countries. Suppose that right now, for example, a citizen of Uruguay

"We must recognise that there is at present no overall world court or world government enforcing its decrees, so that we live in a state of 'international anarchy.'"

claims that he has been swindled by a citizen of Argentina. Which court does he go to? He goes to his own, i.e., the victim's or the plaintiff's court. The case proceeds in the Uruguayan court, and its decision is honored by the Argentinian court. The same is true if an American feels he has been swindled by a Canadian, and so on. In Europe after the Roman Empire, when German tribes lived side by side and in the same areas, if a Visigoth felt that he had been injured by a Frank, he took the case to his own court, and the decision was generally accepted by the Franks. Going to the plaintiff's court is the rational libertarian procedure as well, since the victim or plaintiff is the one who is aggrieved, and who naturally takes the case to his own court. So, in our case, Jones would go say, to the Prudential Court Company to charge Brown with theft.

USE OF VOLUNTARY SUBPOENA

It is possible, of course, that Brown is also a client of the Prudential Court, in which case there is no problem. The Prudential's decision covers both parties, and becomes binding. But one important stipulation is that no coercive subpoena power can be used against Brown, because he must be considered innocent until he is convicted. But Brown would be served with a voluntary subpoena, a notice that he is being tried on such and such a charge and inviting him or his legal representative to appear. If he does not appear, then he will be tried *in absentia,* and this will obviously be less favorable for Brown since his side of the case will not be pleaded in court. If Brown is declared guilty, then the court and its marshals will employ force to seize Brown and exact whatever punishment is decided upon—a punishment which obviously will focus first on restitution of his loss to the victim.

What, however, if Brown does not recognize the Prudential Court? What if he is a client of the Metropolitan Court Company? Here the case becomes more difficult. What will happen then? First, victim Jones pleads his case in the Prudential Court. If Brown is found innocent, this ends the controversy. Suppose, however, that defendant Brown is found guilty. If he does nothing, the court's judgment proceeds against him. Suppose, however, that Brown then takes the case to the Metropolitan Court Company, pleading inefficiency or venality by Prudential. The case will then be heard by Metropolitan. If Metropolitan also finds Brown guilty, then this too ends the controversy and Prudential will proceed against Brown with dispatch. Suppose, however, that Metropolitan finds Brown innocent of the charge. Then what? Will the two courts and their arms-wielding marshals shoot it out in the streets?

PROCEDURE FOR APPEALS

Once again, this would clearly be irrational and self-destructive behavior on the part of the courts. An essential part of their judicial service to their clients is the provision of just, objective, and peacefully functioning decisions—the best and most objective way of arriving at the truth of who committed the crime. Arriving at a decision and then allowing chaotic gunplay would scarcely be considered valuable judicial service by their customers. Thus an essential part of any court's service to its clients would be an appeals procedure. In short, every court would agree to abide by an appeals trial, as decided by a voluntary arbitrator to whom Metropolitan and Prudential would now turn. The appeals judge would make his decision and the result of this third trial would be treated as binding on the guilty. The Prudential court would then proceed to enforcement.

An appeals court! But isn't this setting up a compulsory monopoly government once again? No, because there is nothing in the system that requires any one person or court to be the court of appeal. In short, in the United States at present the Supreme Court is established as *the* court of final appeal, and so the Supreme Court judges become the final arbiters regardless of the wishes of plaintiff or defendant alike. In contrast, in the libertarian society the various competing private courts could go to *any* appeals judge whom they think fair, expert, and objective. No single appeals judge or set of judges would be foisted upon society by coercion.

How would the appeals judges be financed? There are many possible ways, but the most likely way is that they will be paid for by the various original courts who would charge for appeals services in their premiums or fees.

But suppose Brown insists on another appeals judge, and yet another? Couldn't he escape judgment by appealing ad infinitum? Obviously, in *any* society legal proceedings cannot continue indefinitely; there must be *some* cutoff point. In the present statist society, where government monopolizes the judicial function, the Supreme Court is arbitrarily designated as the cutoff point. In the libertarian society, there would also have to be an agreed-upon cutoff point, and since there are only two parties to any crime or dispute—the plaintiff and the defendant—it seems most sensible for the legal code to declare that *a*

decision arrived at by any two courts shall be binding. This will cover the situation when both the plaintiff's and the defendant's courts come to the same decision, as well as the situation when an appeals court decides on a disagreement between the two original courts.

NECESSITY OF LEGAL CODE

It is now clear that there will have to be a legal code in the libertarian society. How? How can there be a legal code, a system of law *without* a government to promulgate it, an appointed system of judges, or a legislature to vote on statutes? To begin with, is a legal code consistent with libertarian principles?

To answer the last question first, it should be clear that a legal code is necessary to lay down precise guidelines for the private courts. If, for example, Court A decides that all redheads are inherently evil and must be punished, it is clear that such decisions are the reverse of libertarian, that such a law would constitute an invasion of the rights of redheads. Hence, any such decision would be *illegal* in terms of libertarian principle, and could not be upheld by the rest of society. It then becomes necessary to have a legal code which would be generally accepted, and which the courts would pledge themselves to follow. *The legal code, simply, would insist on the libertarian principle of no aggression against person or property, define property rights in accordance with libertarian principle, set up rules of evidence (such as currently apply) in deciding who are the wrongdoers in any dispute, and set up a code of maximum punishment for any particular crime.* Within the framework of such a code, the particular courts would compete on the most efficient procedures, and the market would then decide whether judges, juries, etc., are the most efficient methods of providing judicial services.

Are such stable and consistent law codes possible, with only competing judges to develop and apply them, and without government or legislature? Not only are they *possible,* but over the years the best and most successful parts of our legal system were developed precisely in this manner. Legislatures, as well as kings, have been capricious, invasive, and inconsistent. They have only introduced anomalies and despotism into the legal system. In fact, the government is no more qualified to develop and apply law than it is to provide any other service; and just as religion has been separated from the state, and the economy can be separated from the State, so can every other State function, including police, courts, *and* the law itself!

As indicated above, for example, the entire merchant law was developed, not by the State or in State courts, but by private merchant courts. It was only much later that government took over mercantile law from its development in merchants' courts. The same occurred with admiralty law, the entire structure of the law of the sea, shipping, salvages, etc. Here again, the State was not interested, and its jurisdiction did not apply to the high seas; so the shippers themselves took on the task of not only applying, but working out the whole structure of admiralty law in their own private courts. Again, it was only later that the government appropriated admiralty law into its own courts.

DEVELOPMENT OF THE COMMON LAW

Finally, the major body of Anglo-Saxon law, the justly celebrated *common law,* was developed over the centuries by competing judges applying time-honored principles rather than the shifting decrees of the State. These principles were not decided upon arbitrarily by any king or legislature; they grew up over centuries by applying rational—and very often libertarian—principles to the cases before them. The idea of following precedent was developed, *not* as a blind service to the past, but because all the judges of the past had made their decisions in applying the generally accepted common law principles to specific cases and problems. For it was universally held that the judge did not *make* law (as he often does today); the judge's task, his expertise, was in *finding* the law in accepted common law principles, and then applying that law to specific cases or to new technological or institutional conditions. The glory of the centuries-long development of the common law is testimony to their success.

The common law judges, furthermore, functioned very much like private arbitrators, as experts in the law to whom private parties went with their disputes. There was no arbitrarily imposed "supreme court" whose decision would be binding, nor was precedent, though honored, considered as *automatically* binding either. Thus, the libertarian Italian jurist Bruno Leoni has written:

> [C]ourts of judicature could not easily enact arbitrary rules of their own in England, as they were never in a position to do so directly, that is to say, in the usual, sudden, widely ranging and imperious manner of legislators. Moreover, there were so many courts of justice in England and they were so jealous of one another that even the famous principle of the binding precedent was not openly recognized as valid by them until comparatively recent times. Besides, they could never decide anything that had not been previously brought before them by private persons. Finally, comparatively few people used to go before the courts to ask from them the rules deciding their cases.[6]

"The entire merchant law and admiralty law were developed—not by the State or in State courts—but by private courts."

And on the absence of "supreme courts":

> [I] t cannot be denied that the lawyers' law or the judiciary law may tend to acquire the characteristics of legislation, including its undesirable ones, whenever jurists or judges are entitled to decide ultimately on a case . . . In our time the mechanism of the judiciary in certain countries where "supreme courts" are established results in the imposition of the personal views of the members of these courts, or of a majority of them, on all the other people concerned whenever there is a great deal of disagreement between the opinion of the former and the convictions of the latter. But . . . this possibility, far from being necessarily implied in the nature of lawyers' law or of judiciary law, is rather a deviation from it . . . .[7]

Apart from such aberrations, the imposed personal views of the judges were kept to a minimum: (a) by the fact that judges could only make decisions when private citizens brought cases to them; (b) each judge's decisions applied only to the particular case; and (c) because the decisions of the common law judges and lawyers always considered the precedents of the centuries. Furthermore, as Leoni points out, in contrast to legislatures or the executive, where dominant majorities or pressure groups ride roughshod over minorities, judges, by their very position, are constrained to hear and weigh the arguments of the two contending parties in each dispute. "Parties are *equal* as regards the judge, in the sense that they are free to produce arguments and evidence. They do not constitute a group in which dissenting minorities give way to triumphant majorities . . . ." And Leoni points out the analogy between this process and the free market economy: "Of course, arguments may be stronger or weaker, but the fact that every party can produce them is comparable to the fact that everybody can individually compete with everybody else in the market in order to buy and sell."[8]

Professor Leoni found that, in the *private law* area, the ancient Roman judges operated in the same way as the English common law courts:

> The Roman jurist was a sort of scientist; the objects of his research were the solutions to cases that citizens submitted to him for study, just as industrialists might today submit to a physicist or to an engineer a technical problem concerning their plants or their production. Hence, private Roman law was something to be described or to be discovered, not something to be enacted—a world of things that were there, forming part of the common heritage of all Roman citizens. Nobody enacted that law; nobody could change it by any exercise of his personal will . . . . This is the long-run concept or, if you prefer, the Roman concept, of the certainty of the law.[9]

Finally, Professor Leoni was able to use his knowledge of the operations of ancient and common law to answer the vital question: In a libertarian society, "who will appoint the judges . . . to let them perform the task of defining the law?" His answer is: the *people* themselves, people who would go to the judges with the greatest reputation of expertise and wisdom in knowing and applying the basic common legal principles of the society:

> In fact, it is rather immaterial to establish in advance who will appoint the judges, for, in a sense, everybody could do so, as happens to a certain extent when people resort to private arbiters to settle their own quarrels . . . . For the appointment of judges is not such a special problem as would be, for example, that of "appointing" physicists or doctors or other kinds of learned and experienced people. The emergence of good professional people in any society is only apparently due to official appointments, if any. It is, in fact, based on a widespread consent on the part of clients, colleagues, and the public at large—a consent without which no appointment is really effective. Of course, people can be wrong about the true value chosen as being worthy, but these difficulties in their choice are inescapable in any kind of choice.[10]

Of course, in the future libertarian society, the basic legal code would not rely on blind custom, much of which could well be antilibertarian. The code would have to be established on the basis of acknowledged libertarian principle, of nonaggression against the person or property of others; in short, on the basis of reason rather than on mere tradition, however sound its general outlines. Since we have a body of common law principles to draw on, however, the task of reason in correcting and amending the common law would be far easier than trying to construct a body of systematic legal principles *de novo* out of the thin air.

LIBERTARIAN LAW IN PRECONQUEST IRELAND

The most remarkable historical example of a society of libertarian law and courts, however, has been neglected by historians until very recently. And this was also a society where not only the courts and the

law were largely libertarian, but where they operated within a purely *state-less* and libertarian society—in short, a society of virtual "free-market anarchism." This was ancient Ireland—an Ireland which persisted in this libertarian path for roughly a thousand years until its brutal conquest by England in the seventeenth century. And, in contrast to many similarly functioning primitive tribes (such as the Ibos in West Africa, and many European tribes), preconquest Ireland was not in any sense a "primitive" society: it was a highly complex society that was, for centuries, the most advanced, most scholarly, and most civilized in all of Western Europe.

For a thousand years, then, ancient Celtic Ireland had no State or anything like it. As the leading authority on ancient Irish law has written: "There was no legislature, no bailiffs, no police, no public enforcement of justice . . . There was no trace of State-administered justice."[11]

How then was justice secured? The basic political unit of ancient Ireland was the *tuath.* All "freemen" who owned land, all professionals, and all craftsmen, were entitled to become members of a *tuath.* Each *tuath's* members formed an annual assembly which decided all common policies, declared war or peace on other *tuatha,* and elected or deposed their "kings." An important point is that, in contrast to primitive tribes, no one was stuck or bound to a given *tuath,* either because of kinship or of geographical location. Individual members were free to, and often did, secede from a *tuath* and join a competing *tuath.* Often, two or more *tuatha* decided to merge into a single, more efficient unit. As Professor Peden states, "the *tuath* is thus a body of persons voluntarily united for socially beneficial purposes and the sum total of the landed properties of its members constituted its territorial dimension."[12] In short, they did not have the modern State with its claim to sovereignty over a given (usually expanding) territorial area, divorced from the landed property rights of its subjects; on the contrary, *tuatha* were voluntary associations which only comprised the landed properties of its voluntary members. Historically, about 80 to 100 *tuatha* coexisted at any time throughout Ireland.

But what of the elected "king"? Did *he* constitute a form of State ruler? Chiefly, the king functioned as a religious high priest, presiding over the worship rites of the *tuath,* which functioned as a voluntary religious, as well as a social and political organization. As in pagan, pre-Christian, priesthoods, the kingly function was hereditary, this practice carrying over to Christian times. The king was elected by the *tuath* from within a royal kin-group (the *derbfine*), which carried the hereditary priestly function. *Politically,* however, the king had strictly limited functions: he was the military leader of the *tuath,* and he presided over the *tuath* assemblies. But he could only conduct war or peace negotiations as agent of the assemblies; and he was in no sense Sovereign and had no rights of administering justice over *tuath* members. He could not legislate, and when he himself was party to a lawsuit, he had to submit his case to an independent judicial arbiter.

NONGOVERNMENTAL PROFESSIONAL JURISTS

Again, how, then, was law developed and justice maintained? In the first place, the law itself was based on a body of ancient and immemorial custom, passed down as oral and then written tradition through a class of professional jurists called the *filid.* The *filid* were in no sense public, or governmental, officials; they were simply selected by parties to disputes on the basis of their reputations for wisdom, knowledge of the customary law, and for the integrity of their decisions. As Professor Peden states:

> [T]he professional jurists were consulted by parties to disputes for advice as to what the law was in particular cases, and these same men often acted as arbitrators between suitors. They remained at all times private persons, not public officials; their functioning depended upon their knowledge of the law and the integrity of their judicial reputations.[13]

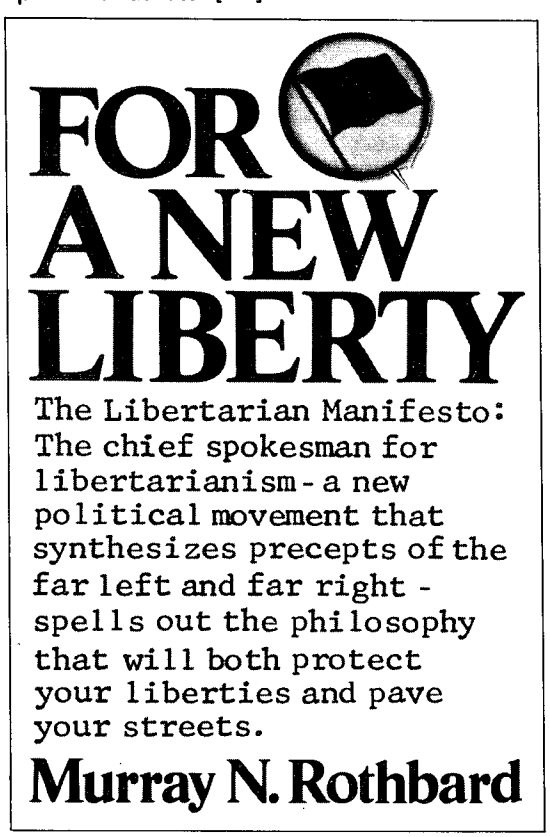
Furthermore, the *filid* jurists had *no connection whatsoever* with the individual *tuatha* or with their kings. They were completely private, national in scope, and were used by disputants throughout Ireland. Moreover, and this is a vital point, in contrast to the system of private Roman lawyers, the *filid* was all there was; there were no other judges, no "public" judges of any kind, in ancient Ireland.

It was the *filid* who were schooled in the law, and who added glosses and applications to the law to fit changing conditions. Furthermore, there was no monopoly, in any sense, of the *filid* jurists; instead, several competing schools of jurisprudence existed and competed for the custom of the Irish people.

How were the decisions of the *filid* enforced? Through an elaborate, voluntarily developed system of "insurance," or sureties. Men were linked together by a variety of surety relationships by which they guaranteed one another for the righting of wrongs, and for the enforcement of justice and the decisions of the *filid.* In short, the *filid* themselves were not involved in the enforcement of decisions, which rested again with private individuals linked through sureties. There were various types of surety. For example, the surety would guarantee with his own property the payment of a debt, and then join the plaintiff in enforcing a debt judgment if the debtor refused to pay. In that case, the debtor would have to

pay double damages: one to the original creditor, and another as compensation to his surety. And this system applied to all offences, aggressions, and assaults as well as to commercial contracts; in short, it applied to all cases of what we would call "civil" and "criminal" law. All criminals were considered to be "debtors" who owed restitution and compensation to their victims, who thus became their "creditors." The victim would gather his sureties around him and proceed to apprehend the criminal or to proclaim his suit publicly and demand that the defendant submit to adjudication of their dispute with the *filid.* The criminal might then send his own sureties to negotiate a settlement or agree to submit the dispute to a *filid.* If he did not do so, he was considered an "outlaw" by the entire community; he could no longer enforce any claim of his own in the courts, and he was treated to the opprobrium of the entire community.[14]

There were occasional "wars," to be sure, in the thousand years of Celtic Ireland, but they were minor brawls, negligible compared to the devastating wars that racked the rest of Europe. As Professor Peden points out, "without the coercive apparatus of the State which can through taxation and conscription mobilize large amounts of arms and manpower, the Irish were unable to sustain any large scale military force in the field for any length of time. Irish wars . . . were pitiful brawls and cattle raids by European standards."[15]



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OUTLAW PROTECTORS

We have saved for the last this problem: What if police or judges and courts should be venal and biased—what if they should bias their decisions, for example, in favor of particularly wealthy clients? We have shown how a libertarian legal and judicial system could work on the purely free market, assuming honest differences of opinion—but what if one or more police or courts should become, in effect, outlaws? What then?

In the first place, libertarians do not flinch from such a question. In contrast to such utopians as Marxists or left-wing anarchists (anarcho-communists or anarcho-syndicalists), libertarians do *not* assume that the ushering in of the purely free society of their dreams will also bring with it a new, magically transformed Libertarian Man. We do not assume that the lion will lie down with the lamb, or that no one will have criminal or fraudulent designs upon his neighbor. The "better" that people will be, of course, the better *any* social system will work, in particular the less work *any* police or courts will have to do. But no such assumption is made by libertarians. What we assert is that, given any particular degree of "goodness" or "badness" among men, the purely libertarian society will be at once the most moral and the most efficient, the least criminal and the most secure of person or property.

Let us first consider the problem of the venal or crooked judge or court. What of the court which favors its own wealthy client in trouble? In the first place, any such favoritism will be highly unlikely, given the rewards and sanctions of the free market economy. The very life of the court, the very livelihood of a judge, will depend on his reputation for integrity, fairmindedness, objectivity, and the quest for truth in every case. This is his "brand name." Should word of any venality leak out, he will immediately lose clients and the courts will no longer have customers; for even those clients who may be criminally inclined will scarcely sponsor a court whose decisions are no longer taken seriously by the rest of society, or who themselves may well be in jail for dishonest and fraudulent dealings. If, for example, Joe Zilch is accused of a crime or breach of contract, and he goes to a "court" headed by his brother-in-law, no one, least of all other, honest courts will take this "court's" decision seriously. It will no longer be considered a "court" in the eyes of anyone but Joe Zilch and his family.

Contrast this built-in corrective mechanism to the present-day government courts. Judges are appointed or elected for long terms, up to life, and they are accorded a monopoly of decision-making in their particular area. It is almost impossible, except in cases of gross corruption, to do anything about venal

decisions of judges. Their power to make and to enforce their decisions continues unchecked year after year. Their salaries continue to be paid, furnished under coercion by the hapless taxpayer. But in the totally free society, any suspicion of a judge or court will cause their customers to melt away and their "decisions" to be ignored. This is a far more efficient system of keeping judges honest than the mechanism of government.

Furthermore, the temptation for venality and bias would be far less for another reason: business firms in the free market earn their keep, *not* from wealthy customers, but from a mass market by consumers. Macy's earns its income from the mass of the population, not from a few wealthy customers. The same is true of Metropolitan Life Insurance today, and the same would be true of any "Metropolitan" court system tomorrow. It would be folly indeed for the courts to risk the loss of favor by the bulk of its customers for the favors of a few wealthy clients. But contrast the present system, where judges, like all other politicians, may be beholden to wealthy contributors who finance the campaigns of their political parties.

CHECKS AND BALANCES—FRAUD OR REAL?

There is a myth that the "American System" provides a superb set of "checks and balances," with the executive, the legislature, and the courts all balancing and checking one against the other, so that power cannot unduly accumulate in one set of hands. But the American "checks and balances" system is largely a fraud. For each one of these institutions are coercive monopolies in their areas, and all of them are part of one government, headed by one political party at any given time. Furthermore, at best there are only two parties, each one close to the other in ideology and personnel, often colluding, and the actual day-to-day business of government headed by a civil service bureaucracy that *cannot* be displaced by the voters. Contrast to these mythical checks and balances the *real* checks and balances provided by the free market economy! What keeps A&P honest is the competition, actual and potential, of Safeway, Pioneer and countless other grocery stores. What keeps them honest is the ability of the consumers to cut off their patronage. What would keep the free-market judges and courts honest is the lively possibility of heading down the block or down the road to *another* judge or court if suspicion should descend on any particular one. What would keep them honest is the lively possibility of their customers cutting off their business. These are the *real,* active checks and balances of the free market economy and the free society.

The same analysis applies to the possibility of a private police force becoming outlaw, of using their coercive powers to exact tribute, set up a "protection racket" to shake down their victims, etc. Of course, such a thing *could* happen. But, in contrast to the present-day society, there would be immediate checks and balances available; there would be *other* police forces who could use their weapons to band together to put down the aggressors against their clientele. If the Metropolitan Police Force should become gangsters and exact tribute, then the rest of society could flock to the Prudential, Equitable, etc., police forces who could band together to put them down. And this contrasts vividly with the State. If a group of gangsters should capture the State apparatus, with its monopoly of coercive weapons, there is nothing at present that can stop them—short of the immensely difficult process of revolution. In a libertarian society there would be no need for a massive revolution to stop the depredation of gangster-States; there would be a swift turning to the honest police forces to check and put down the force that had turned bandit.

And, indeed, what is the State anyway but organized banditry? What is taxation but theft on a gigantic, and unchecked, scale? What is war but mass murder on a scale impossible by private police forces? What is conscription but mass enslavement? Can anyone envision a private police force getting away with a tiny fraction of what States get away with, and do habitually, year after year, century after century?

SENSE OF LEGITIMACY

There is another vital consideration that would make it almost impossible for an outlaw police force to commit anything like the banditry that modern governments practice. One of the crucial factors that permits governments to do the monstrous things they habitually do is the sense of *legitimacy* on the part of the stupefied public. The average citizen may not like—may even strongly object—to the policies and exactions of his government. But he has been imbued with the idea—carefully indoctrinated by centuries of governmental propaganda—that the government is his legitimate sovereign, and that it would be wicked or mad to refuse to obey its dictates. It is this sense of legitimacy that the State's intellectuals have fostered over the ages, aided and abetted by all the trappings of legitimacy; flags, rituals, ceremonies, awards, constitutions, etc. A bandit gang—*even if all* the police forces conspired together into one vast gang—could never command such legitimacy. The public would consider them purely bandits; their extortions and tributes would never be considered legitimate though onerous "taxes," to be paid automatically. The public would quickly resist these illegitimate demands and the bandits would be resisted and overthrown. Once the public had tasted the joys, prosperity, freedom, and efficiency of a libertarian, State-less society, it would be almost impossible for a State to fasten itself upon them once again. Once freedom has been fully

"The American "checks and balances" system is largely a fraud, contrasted to the real *checks and balances provided by the free market economy."*

enjoyed, it is no easy task to force people to give it up.

But *suppose*—just suppose—that despite all these handicaps and obstacles, despite the love for their new-found freedom, despite the inherent checks and balances of the free market, suppose *anyway* that the State manages to reestablish itself. What then? Well, then, all that would have happened is that we would have a State once again. We would be no worse off than we are now, with our current State. *And,* as one libertarian philosopher has put it, "at least the world will have had a glorious holiday." Karl Marx's ringing promise applies far more to a libertarian society than to communism: In trying freedom, in abolishing the State, we have nothing to lose and everything to gain.

BUT WHAT ABOUT THE RUSSIANS?

We come now to what is usually the final argument against the libertarian position. Every libertarian has heard a sympathetic but critical listener say: "All right. I see how this system could be applied successfully to local police and courts. but how could a libertarian society defend us against the Russians?"

There are, of course, several dubious assumptions implied in such a question. There is the assumption that the Russians are bent upon military invasion of the United States, a doubtful assumption at best. There is the assumption that any such desire would still remain after the United States had become a purely libertarian, "free-market anarchist" society. This notion overlooks the lesson of history that wars result from conflicts between nation-states, each armed to the teeth, each direly suspicious of attack by the other. But a libertarian United States would clearly not be a threat to anyone, not because it had no arms but because it would be dedicated to no aggression against anyone, or against any country. Being no longer a nation-state, which is inherently threatening, there would be little chance of any country attacking us. One of the great evils of the nation-state is that each State is able to identify all of its subjects with itself; hence in any inter-State war, the innocent civilians, the subjects of each country, are subject to aggression from the enemy State. But in a libertarian society there would be no such identification, and hence very little chance of such a devastating war. Suppose, for example, that our outlaw Metropolitan Police Force has initiated aggression not only against Americans but also against Mexicans. If Mexico had a government, then clearly the Mexican government would know full well that Americans in general were not implicated in the Metropolitan's crimes, and had no symbiotic relationship with it. If the Mexican police engaged in a punitive expedition to punish the Metropolitan force, they would not be at war with Americans in general—as they would be now. In fact, it is highly likely that other American forces would join the Mexicans in putting down the aggressor. Hence, the idea of inter-State war against a libertarian country or geographical area would most likely disappear.

There is, furthermore, a grave philosophical error in the very posing of this sort of question about the Russians. When we contemplate *any* sort of new system, whatever it may be, we must *first* decide on whether we want to see it brought about. In order to decide whether we *want* libertarianism or communism, or left-wing anarchism, or theocracy, or any other system, we must first assume that it has been established, and *then* consider whether the system could work, whether it could remain in existence, and how efficient or just such a system would be. We have shown, I believe, that a libertarian system, once instituted, could work, be viable, and be at once far more efficient, prosperous, moral, and free than any other social system. But we have said nothing about how to *get* from the present system to the ideal; for these are two totally separate questions. The question of what *is* our ideal goal, and of the strategy and tactics of how to get from the present system *to* that goal. The Russian question mixes these two levels of discourse. It assumes, *not* that libertarianism has been established everywhere throughout the globe, but that for some reason it has been established *only* in the United States and nowhere else. But why assume this? Why not first assume that it has been established *everywhere* and see whether we like it? After all, the libertarian philosophy is an eternal one, not bound to time or place. We advocate liberty for everyone, everywhere, not just in the United States. If someone agrees that a world libertarian society, once established, is the best that he can conceive, that it would be workable, efficient, and moral, then let him *become* a libertarian, let him join us in accepting liberty as our ideal goal, and *then* join us further in the separate—and obviously difficult—task of figuring out how to bring this ideal about.

If we do move on to strategy, it is obvious that the larger an area in which liberty is first established the *better* its chances for survival, and the better its chance to resist any violent overthrow that may be attempted. If liberty is established instantaneously throughout the world, then there will of course be *no* problem of "national defense." *All* problems will be local police problems. If, however, only Deep Falls,

Wyoming, becomes libertarian while the rest of the United States and the world remain statist, its chances for survival will be very slim. If Deep Falls, Wyoming, declares its secession from the United States government and establishes a free society, the chances are very great that the United States—given its historical ferocity toward secessionists—would quickly invade and crush the new free society, and there is little that *any* Deep Falls police force could do about it. Between these two polar cases, there is an infinite continuum of degrees, and obviously, the larger the area of freedom, the better it could withstand any outside threat. The "Russian question" is therefore a matter of strategy rather than a matter of deciding on basic principles and on the goal toward which we wish to direct our efforts.

VOLUNTARY "NATIONAL" DEFENSE

But after all this is said and done, let us take up the Russian question anyway. Let us assume that the Soviet Union would really be hell-bent on attacking a libertarian population within the present boundaries of the United States (clearly, there would no longer be a United States government to form a single nation-state). In the first place, the form and quantity of defense expenditures would be decided upon by the American consumers themselves. Those Americans who favor Polaris submarines, and fear a Soviet threat, would subscribe toward the financing of such vessels. Those who prefer an ABM system would invest in such defensive missiles. Those who laugh at such a threat or those who are committed pacifists would not contribute to any "national" defense service at all. Different defense theories would be applied in proportion to those who agree with, and support, the various theories being offered. Given the enormous waste in all wars and defense preparations in all countries throughout history, it is certainly not beyond the bounds of reason to propose that private, voluntary defense efforts would be far more efficient than government boondoggles. Certainly these efforts would be infinitely more moral.

But let us assume the worst: Let us assume that the Soviet Union at last invades and conquers the territory of America. What then? We have to realize that the Soviet Union's difficulties will have only just begun. The main reason that any conquering country can rule a defeated country is that the latter has an existing State apparatus to transmit and enforce the victor's orders onto a subject population. Britain, though far smaller in area and population, was able to rule India for centuries because it could transmit British orders to the ruling Indian princes, who in turn could enforce them on the subject population. But in those cases in history where the conquered *had* no government, the conquerors found rule over the conquered extremely difficult. When the British conquered West Africa, for example, they found it extremely difficult to govern the Ibo tribe (later to form Biafra) because that tribe was essentially anarchistic, and had no ruling government of tribal chiefs to transmit orders to the natives. And perhaps the major reason that it took the English centuries to conquer ancient Ireland is that the Irish had no State, and that there was therefore no ruling governmental structure to keep treaties, transmit orders, etc. It is for this reason that the English kept denouncing the "wild" and "uncivilized" Irish as "faithless," because they would not keep treaties with the English conquerors. The English could never understand that, lacking any sort of State, the Irish warriors who concluded treaties with the English could *only* speak for themselves; they could never commit any other group of the Irish population.[16]

Furthermore, the occupying Russians' lives would be made even more difficult by the inevitable eruption of guerrilla warfare by the American population. It is surely a lesson of the twentieth century—a lesson first driven home by the successful American revolutionaries against the might British Empire—that no occupying force can long keep down a native population determined to resist. If the giant United States, armed with a far greater productivity and firepower, could not succeed against a tiny and relatively unarmed Vietnamese population, how in the world could the Soviet Union succeed in keeping down the American people? No Russian occupation soldier's life would be safe from the wrath of a resisting American populace. Guerrilla warfare has proved to be an irresistible force precisely because it stems, not from a dictatorial central government, but from the people themselves, fighting for their liberty and independence against a foreign State. And surely the anticipation of this sea of troubles, of the enormous costs and losses that would inevitably follow, would stop well in advance even a hypothetical Soviet government bent on military conquest.

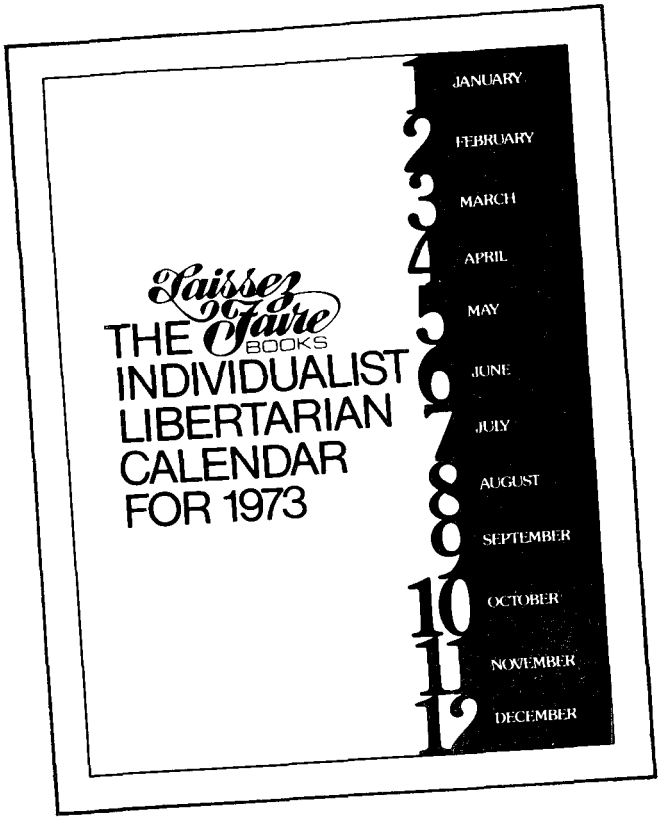
LESSON OF THEORY AND HISTORY

Thus, we have indicated that it is perfectly possible, in theory and historically, to have efficient and courteous police, competent and learned judges, and a body of systematic and socially accepted law—and none of these things being furnished by a coercive government. Government—claiming a compulsory monopoly of protection over a geographical area, and extracting its revenues by force—can be separated from the entire field of protection. Government is no more necessary for providing vital protection service than it is necessary for providing anything else. And we have not stressed a crucial fact about government: that its compulsory monopoly over the weapons of coercion have led it, over the centuries, to infinitely more butcheries, infinitely greater tyranny and oppression than any decentralized, private

agencies could possibly have done. If we look at the black record of mass murder, exploitation, and tyranny levied on society by governments over the ages, we need not be loath to abandon the Leviathan State and . . . try freedom.

NOTES AND REFERENCES

[1] In Chapter 10 of *FOR A NEW LIBERTY.*
[2] This subject is discussed in Chapter 10 of *FOR A NEW LIBERTY.* Abolition of the public sector means, of course, that *all* pieces of land, all land areas, including streets and roads, would be owned privately, by individuals, corporations, cooperatives or any other voluntary groupings of individuals and capital. The fact that all streets and land areas would be private would by itself solve many of the seemingly insoluble problems of private operation. What we need to do is to reorient our thinking to consider a world in which all land areas are privately owned.
[3] In Chapter 10 of *FOR A NEW LIBERTY.* To ask *why* landlords should provide safe streets in the libertarian, fully private society is just as silly as asking *now* why they should provide their tenants with heat or hot water. The force of competition and of consumer demand would make them supply such services.
[4] See William G. Woolridge, *UNCLE SAM, THE MONOPOLY MAN* (New Rochelle, N.Y.: Arlington House, 1970), pp. 111ff.
[5] *Ibid.*, p. 96. Also see *ibid.*, pp. 94-110.
[6] Bruno Leoni, *FREEDOM AND THE LAW* (Los Angeles: Nash Publishing Co., 1972), p. 87.
[7] *Ibid.*, pp. 23-24.
[8] *Ibid.*, p. 188.
[9] *Ibid.*, pp. 84-85.
[10] *Ibid.*, p. 183.
[11] Quoted in the best introduction to ancient, anarchistic Irish institutions, Joseph R. Peden, "Stateless Societies: Ancient Ireland," *THE LIBERTARIAN FORUM* (April 1971), pp. 3ff. Also see Daniel A. Binchy, *ANGLO-SAXON AND IRISH KINGSHIP* (London, 1970); Myles Dillon, *THE CELTIC REALMS* (London 1967), and *id. EARLY IRISH SOCIETY* (Dublin 1954).
[12] Peden, *supra* note 11, p. 4.
[13] Peden, *supra* note 11, p. 4.
[14] Professor Charles Donahue of Fordham University has maintained that the secular part of ancient Irish law was not simply haphazard tradition; that it was consciously rooted in the Stoic conception of *natural law,* discoverable by man's reason. Charles Donahue, "Early Celtic Laws," (unpublished paper, delivered at the Columbia University Seminar in the History of Legal and Political Thought, Autumn, 1964), pp. 13ff.
[15] Peden, *supra* note 11, p. 3.
[16] Peden, *supra* note 11, p. 3; also see Kathleen Hughes, introduction to A. Jocelyn Otway-Ruthven, *A HISTORY OF MEDIEVAL IRELAND* (London, 1968).



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LYSANDER SPOONER:
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CARL WATNER

One of the most interesting Individualists to have lived, both on a biographical and philosophical plane, was Lysander Spooner. Here was a man who lived his ideas, fought for them, and suffered their consequences. Although he may not have won the battle in his lifetime, his name was symbolic of victory. Lysander was the admiral of Sparta who destroyed the Athenian fleet, ending the Peloponnesian War.[1]

Spooner was born in 1808 of New England farm toilers and trained himself for a career in the law. His career was to be a series of disputes about the legality and conduct of contemporary government: his public petition, *TO THE MEMBERS OF THE LEGISLATURE OF MASSACHUSETTS,* concerning requirements for admission to the bar in that state, which he openly flaunted; his court case claiming that the State of Ohio could not obstruct navigable interstate streams; his commercial and constitutional challenge against the United States Postal Service in 1844, which resulted in the reduction of postage; and his abolitionist stance before and during the Civil War.

He was a great pamphleteer, and his numerous writings include articles titled "The Unconstitutionality of the Laws of Congress, Prohibiting Private Mails," "No Treason, Nos. I, II and VI," "An Essay on the Trial by Jury," "The Unconstitutionality of Slavery" and "Constitutional Law, Relative to Credit, Currency, and Banking." Many of these articles originally appeared in Benjamin Tucker's individualist organ, *LIBERTY.*

Carl Watner is a student of the works of Spooner. He is interested in corresponding with readers interested in Spooner's ideas. He may be contacted directly at 1112 Race Street, Baltimore MD 21230.

Spooner's last piece appeared between June 20, 1885, and March 26, 1886, and was entitled, "A Letter to Grover Cleveland, on His False Inaugural Address, The Usurpations and Crimes of Lawmakers and Judges, and the Consequent Poverty, Ignorance, and Servitude of the People."[2] In many ways this work was the crowning glory of Spooner's life. It presented the full range of his political ideas and drew upon his prior writings. It was the primary source referred to in writing this article.

Recently Ayn Rand has published a letter entitled "Representation without Authorization."[3] Not only is her subject, the principles of political representation, one in which Spooner was greatly interested, but Spooner's approach and conclusions sharply illustrate the difference arising among libertarians today; for example, the contrast between those who favor a limited government and those who favor no-government or anarcho-capitalism.

CONTRACT LAW AND AGENCY PRINCIPLES

As a lawyer, Spooner was fully knowledgeable of contract law and the principles of agency. He stressed that any contract in which a man gives up his natural, individual rights is void, because it is an inherent impossibility for a man to alienate himself from such rights.[4] Further, the fundamental principle underlying a principal-agent relationship is a written document serving as a power of attorney or authorization. In this manner, a principal is fully responsible to third parties for the actions of his agent.

Applying these ideas to the national government, Spooner concluded that the government and the Constitution on which it is allegedly based, is illegitimate.[5] The Constitution cannot be interpreted as a social contract because the general laws of

Lysander Spooner

agency prohibit such a construction and the type of government that would result. Political representation is based on majority rule and the secret ballot. A legislator claims to be a representative of his constituency; yet he cannot show which voters selected him because of the secret ballot; nor can he produce any power of attorney substantiating his claim that he is in fact their representative; nor can he in good faith lay claim to represent those who voted against him, since they were obviously opposed to his selection. Similarly, the Constitution was only approved by a small number of men when it succeeded the Articles of Confederation. Nor can supporters of the Constitution show legal proof that people living today accept it. Spooner asserted that no government may claim to rest on the consent of the governed unless it has first secured the individual consent of every man who is required to contribute either by taxation or personal service to its support.

> All this, or nothing, is necessarily implied, because one man's consent is just as necessary as any other man's.
>
> There is, therefore, no alternative but to say, either that the separate, individual consent of every man, *who is required to aid, in any way, in supporting the government,* is necessary, or that consent of no one is necessary.
>
> All this, or nothing, was necessarily implied in the Declaration made in 1776.
>
> The whole Revolution, therefore, as a Revolution, was declared and accomplished by the people, acting separately as individuals, and exercising each his natural rights, and not by their governments in the exercise of their constitutional powers. . . .
>
> Thus the whole Revolution turned upon, asserted, and, in theory, established, the right of each and every man, at his discretion, to release himself from the support of the government under which he had lived. And this principle was asserted, not as a right peculiar to themselves, or to that time, or as applicable only to the government then existing; but as a universal right of all men, at all times, and under all circumstances. . . .
>
> This principle was a true one in 1776. It is a true one now. It is the only one on which any rightful government can rest. It is the one on which the Constitution itself professes to rest. If it does not really rest on that basis, it has no right to exist; and it is the duty of every man to raise his hand against it.[6]

AGENCY RULES APPLIED TO GOVERNMENT

Miss Rand presents representative government as being based on the principle that man is a rational being and that man is able to choose and bear the responsibility for the course of his life.[7] "Politically this principle is implemented by a man's right to choose his own agents, i.e., those whom he authorizes to represent him in the government of his country".[8] However, in Spooner's analysis, there is no distinction between political representation and representation for any other purpose. Agents acting in any capacity whatsoever, either political or commercial, must still abide by the rules of agency which require an agent to produce the authority of his principal. Nor may an agent represent two principals whose interests conflict. At law, if a person purportedly acts as an agent, and subsequently is unable to produce a power of attorney in order to disclose his principal, then that alleged agent is said to have acted solely in his own name, and must ratify and suffer the consequences of his actions and contracts. Of course, if individuals acted in their own name and performed coercive acts such as government agents perform, they would be treated as criminals. Thus, Spooner concluded that government is a secret band of robbers and murderers who are bound by that faith which prevails among confederates in crime.

> Men honestly engaged in attempting to establish justice in the world, have no occasion thus to act in secret; or to appoint agents to do acts for which they (the principals) are not willing to be responsible.

> The secret ballot makes a secret government; and a secret government is a secret band of robbers and murderers. . . .
>
> This is the kind of government we have; and it is the only one we are likely to have, until men are ready to say: We will consent to no Constitution, except such an one as we are neither ashamed nor afraid to sign; and we will authorize no government to do any thing in our name which we are not willing to be personally responsible for.[9]

AYN RAND'S ANALYSIS COMPARED

The methods used in the process of political representation are not called into question by Miss Rand. She does not challenge the use of the secret ballot, nor the failure of personal responsibility to attach to political representatives, when they are unable to produce a written document disclosing their principals. However, she does conclude her letter by stating: "No organization has the right to speak for or to act in the name of anyone but its own members. No organization may be taken as an agent for an individual without his personal knowledge or consent".[10] Spooner would have wholeheartedly agreed, but apparently Miss Rand does not apply this principle to the concept of government as we know it today; for governments as organizations are certainly in violation of her statement.

Spooner consistently maintained that the existence of a lawmaking government or any government, unless voluntarily organized and supported, was a violation of men's rights. Since it is impossible for men to delegate their natural rights (because such rights are inalienable), it is impossible for 'A' to delegate his right of lawmaking to 'B', and in return agree to abide by 'B's' laws. Nor can 'A' delegate such authority to 'B' in order to compel 'C' to obey 'B's' laws. Neither lawmaking nor judicial powers can be delegated.[11]

At the same time that Spooner spoke out against improper delegation of power, however, Spooner was willing to admit that men may voluntarily associate together for the end of maintaining justice. Such a justice enforcing association would have to rest on the previously outlined principles of agency. Every man has certain judicial powers or rights. He has by nature the right to judge and enforce his own rights, to judge of or redress his own wrongs. But, in doing so, a man must only act in accordance with his own judgment and conscience, subject to his own personal responsibility if he commits an error injurious to another.

If a man chooses to enter into a voluntary association for the maintenance of justice, *he still must be personally responsible for his actions and those of his agents.* Particularly those who exercise judicial powers must be at all times responsible for their own actions and decisions. Such so-called "judges" would be personally responsible for any errors resulting in injuries to others. In Spooner's eyes, a tribunal of justice acting under such instructions should consist of several judges to lessen the probability of any error being made, and all proceedings should be reduced to writing for the protection of the interested parties.

TRUE CHARACTER OF GOVERNMENT

By way of comparing his ideas to contemporary governments, Spooner concluded that there never was a single court of justice in the United States;[12] nor had the Treasury of the government ever an honest dollar in its till.[13] So long as governments depend on coercion, justice cannot be obtained; nor can money used in support of the government be shown to have been obtained voluntarily. If taxation without consent is not robbery, as government advocates maintain, then Spooner deduced that any band of robbers have only to declare themselves a government, and thus their robberies would be legalized.[14] And this is essentially what government is, according to Spooner, robbery under the guise of taxation in one form or another. The true character of government assumes that all human rights of the people are thrown into one large hotch potch, and this heap is then thrown to the lawmakers and members of Congress, for each to carry off as large a portion as possible. The political parties which participate in this plunder are thus standing armies of robbers—each trying to rob each other and prevent themselves from being robbed.[15]

Spooner had great respect for the Common Law and heritage derived from the English struggle for liberty. His theories rested on two primaries: *no taxation without representation* and *trial by jury.* The first meant securing the voluntary consent of every man who must support the government, and the second meant a jury trial by peers. Spooner's legal ethics were summed up in his pamphlet on *NATURAL LAW; OR THE SCIENCE OF JUSTICE: A TREATISE ON NATURAL LAW, NATURAL JUSTICE, NATURAL RIGHTS, NATURAL LIBERTY, AND NATURAL SOCIETY; SHOWING THAT ALL LEGISLATION WHATSOEVER IS AN ABSURDITY, A USURPATION, AND A CRIME.* Justice is the only principle that any man can rightfully enforce upon others or consent to have enforced against himself. Men may compel each other to obey this law of justice, but outside this realm, no man or group of men may lay claim to violate individual rights. Individual liberty means freedom from all human coercion so long as a person lives honestly, hurts no one, and gives to every man his due.[16]

If men accept a lawmaking government as legitimate, Spooner pointed out, then they must then forego all claims to their individual rights. Once it is conceded that any man or body of men have the powers to make laws, in contrast to the natural law of justice, and can compel other men to obey them, then every vestige of man's natural liberty is gone.[17] If only one right is arbitrarily taken from men, then all the rest of their rights may suffer. There is no right that the government of the United States considers inviolable.[18] The government does not recognize a man's right to his own life, for it engages in conscription; it does not recognize a man's right to his property, for it engages in taxation; and it does not recognize a man's right to make his own contracts, for it enforces legal tender laws. Such actions only tend to re-enforce the argument that the major enemy of man's right is government. Nor has government changed since Spooner's day.

Spooner's analyses are as pertinent today as when written. He would not accept government for what it claimed to be. He analyzed government from its own legal framework, and saw that it was nothing but usurpation. He blazed a trail which others had started before him, and which libertarians today are still on. Governments must be killed by ideas; not by force. Libertarians today can certainly use the strength and logic of Spooner's ideas to kill the idea of government and its mystique. ◻

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[2] This and the entire known works of Spooner have been reprinted by M & S Press, Weston, Massachusetts, 1971, in their six volume set, *THE COLLECTED WORKS OF LYSANDER SPOONER.* When no reference is given, other than a section number reference is made to "A Letter to Grover Cleveland".
[3] *THE AYN RAND LETTER,* Vol. 1, No. 21, July 17, 1972, published by The Ayn Rand Letter, Inc., 201 East 34th Street, New York, New York 10016. This is referred to below as *RAND LETTER.*
[4] Section 7.
[5] See "No Treason, No. VI", particularly Section 8 of this work.
[6] "No Treason, No. I," Section 4.
[7] *RAND LETTER,* p. 1.
[8] *RAND LETTER,* p. 1.

[9] "No Treason, No. VI," Section 9.
[10] *RAND LETTER,* p. 4.
[11] Section 16.
[12] Section 17.
[13] Section 6.
[14] Section 6.
[15] Section 10.
[16] *NATURAL LAW; OR THE SCIENCE OF JUSTICE,* Section 1, Chapter 1. Also see Sections 3, 4 and 11 of "A Letter to Grover Cleveland."
[17] Section 12.
[18] Section 12.

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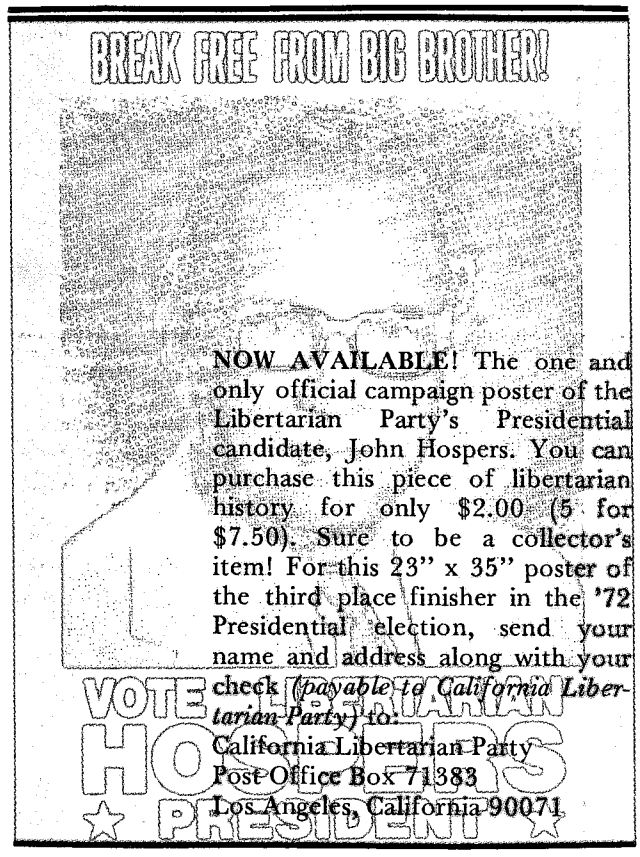

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Resolving Disputes in a Free Society

ADAM V REED

When attempting to solve a difficult problem, it is a good idea to solve the simplest special case first. The failure of libertarians to follow this procedure when discussing the protection of rights in a free society is responsible for a considerable amount of confusion; confusion which has led, among other factors, to the current ideological conflict between "anarcho-capitalists" on one hand, and supporters of limited government, with exclusive jurisdiction in some specified geographical area, on the other. Both sides have attempted to derive their position in the context of retaliation for crime, a situation complicated by the dubious status of the rights of a person intentionally violating the rights of another. Civil disagreement, in which neither party is trying or willing to abridge the rights of the other, provides a simple and symmetrical context in which to derive libertarian institutions. It will be shown that the conflict between the two libertarian positions is more apparent than real.

OWNERSHIP DISPUTE

Let us consider the contest between two just men, each of whom believes himself to be the rightful owner of the same piece of property. Neither has any doubt about his case. Nonbinding arbitration, in which the arbitrator acts essentially as a joint consultant to both sides, has been tried, and failed to produce a mutually acceptable solution. Each party is sufficiently certain of its position to be willing to support its claim by armed force if necessary, but knows that an armed conflict might cost more than the contested item is worth. What can they do?

One partial solution, for which no permanent institutions are needed, is for the two to agree to settle their dispute by tossing a coin. However, since each believes himself justly entitled to the contested property, it is conceivable that the loser would renege on the agreement after the toss. This solution demands, therefore, that each side agree in advance to have the outcome of the toss enforced against him. In such an agreement, each individual risks losing all claim to an article he believes to be rightfully his. The predictable results of armed conflict being what they are, this risk is a price that a rational man would usually be willing to pay for avoiding a clash. Still, the probability that the holder of the valid claim will lose the toss is about 50%. There are ways of doing better than that.

Adam Reed is a Ph.D. candidate in mathematical psychology at the University of Oregon. He holds B.S. and M.S. degrees in electrical engineering and biology from MIT.

RATIONAL JUDGE OR COIN TOSS?

People are neither omniscient nor infallible. If they were, civil disputes could not arise in the first place. If even one infallible arbiter could be found, we would not have to contend with the failure of nonbinding arbitration. However, infallible or not, human judges can do a lot better than chance. The coin would err half the time. A good human judge can hold his errors down to one per cent or less. A rational judge, knowing that he can err, would not risk initiating force by ordering the enforcement of his verdict unless both sides agreed in advance to have the eventual verdict enforced against them. When such an agreement exists, and its verdict can be enforced without risking violation of rights, the court will be said to have jurisdiction over the case. Usually, this will not be a problem: if the two sides were likely to accept the 50% risk inherent in a coin toss, they are virtually certain to accept the much smaller risk of judicial error. If the two sides agree on a judge, their dispute is as good as settled. But what if they don't?

Suppose, for a moment, that you are a party to a civil dispute with a fellow libertarian. You have suggested several judges, but the other side has rejected them all. You are in a quandary as to what you should do next, and so you turn to libertarian books for advice. You know that any future libertarian society will either have to find a way to solve such problems, or a way to keep them from arising in the first place. What advice do you find?

Heinlein[1] and Rothbard[2] recommend that you, or your hired "protective agency", just go on ahead and submit the case to your chosen judge, and then proceed to execute his verdict. Heinlein appears to have given no thought to the possibility that your chosen court might err in your favor, in which case the rights of your adversary would be violated by the enforcement of a verdict your adversary never consented to have enforced. Rothbard gives your adversary a chance to appeal the verdict, but only to an appellate court recognized by the court of your choice. Rothbard realizes that even this appellate court might err, in which case the other guy's rights would still be violated; but he seems to feel that this risk is small and unavoidable.

From the other end of the "anarcho-capitalist" spectrum, Robert Le Fevre advises you that any risk of violating the rights of another person is unacceptable. You should avoid conflict, and let your adversary take the contested item. Well, you think, I might not mind doing it this once—the adversary looks like an honest guy anyway—but I remember my game theory: if I decide never to insist on defending my rights, I'm going to get stepped on. Both solutions to the problem of a dispute over which no court has jurisdiction look rather dismal.

TERRITORIAL JURISDICTION

Fortunately, any person living in a libertarian society would be free to anticipate and prevent the above quandary: free to make sure, in advance, that some court will have jurisdiction over every possible conflict in which one might be involved. The simplest approach is to identify the sources of possible future disputes, and to secure in advance appropriate agreements with others likely to be involved. For example, since many civil disagreements concern contracts, it is advisable to specify in every contract which court is to have jurisdiction in case of dispute. Other disagreements may arise from unilateral human action, or from questions about ownership of property. The only known method capable of making certain that every such dispute will be subject to rationally enforceable settlement by some court is *territorial jurisdiction.* What is territorial jurisdiction, and how would it work?

Every human action takes place in some specific location. Similarly, every object is located in some particular place. *In a free society, all places will be privately owned.* The owner of each location will be able to impose any conditions he wishes on the priviledge of using his territory. One condition could be that any disputes between the owner and a user of the territory, or among users, be referred for binding and enforceable settlement to some particular court. Territorial jurisdiction is a system of such conditions, covering every possible dispute among people in a given area.

Let us examine the provisions necessary to make sure that every possible dispute will be covered. In addition to disputes between himself and the owner, the user would have to give the court authority to penalize him for any action, taken within the territory, which might be alleged to have caused harm to others. Similarly, the court would be given authority to adjudicate any damage to the user's person or property resulting from actions of others within the territory. Permission to place any property on the territory would be conditional on acceptance of the court's jurisdiction in any dispute over ownership of the property. The owner would also be asked to make any transfer conditional on acceptance of jurisdiction for as long as the property remains on territory assigned to the court. For example, if the owner died, the court would continue to have jurisdiction over the property even if none of the prospective heirs had ever set foot within its territory. To make sure that some court would have jurisdiction over unilaterally moved property, the court of A would reserve jurisdiction over the act of taking property from A to B. Other details, such as the posting of signs identifying the court with jurisdiction in one's territory, are obvious, and need no elaboration.

Any owner of territory would remain free not to impose territorial jurisdiction. We have seen, however, that disputes over which no court has jurisdiction lead to situations in which one has to choose between abandoning one's own rights, and risking the violation of somebody else's. Thus, a rational person is not likely to venture into territory over which no court has jurisdiction.

SHARED JURISDICTION

An owner might also insist that users of his territory accept the jurisdiction of more than one government. Rational reasons to do so are difficult to imagine, and the disadvantages of shared jurisdiction obvious. Since different courts could arrive at different verdicts, thus failing to resolve a conflict (and possibly fanning it instead) it is essential to shared jurisdiction that once some court has accepted a case the others disavow jurisdiction. Shared jurisdiction would encourage the initiation of lawsuits, since it would give an advantage (that of choosing the most convenient court) to the first to file. It is therefore likely that in a free society each government would enjoy a "monopoly" on the provision of enforceable verdicts within some specified geographical area. This area might change over time, since the owner of each territory would be entitled to assign jurisdiction over it to any legitimate government willing to accept it. Each government would of course insist on a clear

proof of the owner's title before accepting jurisdiction.

Some libertarian writers, notably R. A. Childs Jr.[3], have asserted that to maintain exclusive territorial jurisdiction, a government would have to

> use force or the threat of it against (any competing) institution, in order to keep its monopoly status in the given territory, thus initiating the use or threat of physical force against one who has not himself initiated force.

Such assertions ignore the fact that in a free society an owner has the right to impose any condition he wishes on the use of his territory; and that, as we have seen, the acceptance of some particular government's exclusive jurisdiction is an eminently rational condition to impose. Admittedly, Childs may have been arguing against a permanent monopoly; but no libertarian advocate of limited government has ever implied that the territory within a government's jurisdiction must remain fixed over time. (During the 1972 Spring Libertarian Conference at USC in Los Angeles, I asked Nathaniel Branden, a leading libertarian advocate of the limited-government position, whether in a free society the owner of a piece of a territory would be free to transfer jurisdiction over it from one government to another. His answer was, "I don't see why not." It caused a bit of a stir among anarcho-individualists in the audience, who may have realized that, in their zeal to attack the limited-government position, they had forgotten to make sure they understood what that position was.) At the same time, and contrary to the assertions of some advocates of limited government, economic competition would be a fact of life among governments in a free society. The owner of each piece of territory would have a strong incentive to assign jurisdiction over it to the government providing the best service at least cost.

By starting from the simple and symmetrical case of a civil disagreement, we have gained an insight into the institutions which would arise to deal with conflict in a free society. We have shown that rational institutions, such as governments with exclusive territorial jurisdiction, can be established and maintained without initiating force; and that their mandate to judge comes not from fear or coercion, but from an exercise of reason by free men. ◻

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[1] Robert Heinlein, *THE MOON IS A HARSH MISTRESS* (New York: Putnam, 1966).
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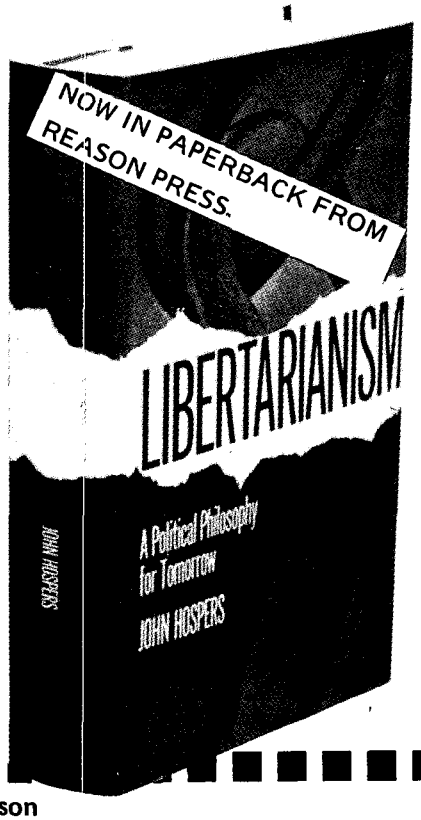

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COMPULSORY EDUCATION

Compulsory education has come under increasing fire from the "educational establishment" as well as the critics on the "fringe." Disciplinary problems–what to do with the uncontrollable students–is no doubt the reason for groups such as NEA to question the compulsory attendance laws. Those critics outside of the education establishment have numerous and various reasons for their attacks. The Center for Independent Education offers the following publications on this subject:

Arons, Stephen, "Compulsory Education–The Plain People Resist." *The Saturday Review,* 15 January 1972, pp. 52-57. (10¢)

Stephen Arons, a practicing attorney, considers the Supreme Court case of Wisconsin v. Yoder. Admittedly the legal question is the quite narrow one of religious freedom. Mr. Arons claims that the case, despite the narrowness of the legal decision, does call into question the entire rationale for compulsory schooling.

It State-compelled attendance is to be conceded, the State must justify its infringement of First Amendment Rights. Mr. Arons, in pointing to the contests which arise between the State and the parent, quotes John Stuart Mill:

> A general state education is a mere contrivance for molding people to be exactly like one another; and as the mold in which it casts them is that which pleases the predominant power in the government–whether this be a monarch, a priesthood, an aristocracy, or the majority of the existing generation–in proportion as it is efficient and successful, it establishes a despotism over the mind, leading by natural tendency to one over the body.

West, E. G. "The Political Economy of American Public School Legislation." *The Journal of Law and Economics 10* (1967): 101-128. (25¢)

Professor West gives an account of the dual consideration of compulsory payment and compulsory consumption legislation as it evolved in New York during the nineteenth century.

Dr. West points out that, until the free school campaign got underway in 1840, it seems to have been readily acknowledged that education could continue to be universal without being free and without compulsion. (For documentation, West cites the Superintendent's reports of the 1830's, particularly the 1836 report). In 1866, the year before the abolition of the rate bills (fees to the parents who were required to pay in proportion to the attendance of their children) in New York, education continued to be almost universal, although not yet compulsory.

West maintains that "the final link in the process of monopolizing education" occurred in New York with the passage of the Compulsory Education Act in 1874.

Rothbard, Murray N. *Education, Free and Compulsory.* Wichita, Kansas: Center for Independent Education, 1972. ($1.00)

In this essay, Dr. Rothbard surveys the history of compulsory education in Europe and America and traces the influence of European educators on the development of education in America.

He points out that education has historically been a tool of either religion or the state. When religious leaders have been in control of education, education has adopted the goal of molding "good men." When the state has controlled education without religious influence, molding "obedient citizens" has been its goal. The author contends that in either case the individual's growth and development are denied.

Rothbard asserts that the "key issue is simply this: shall the parent or the state be the overseer of the child? . . . There is no middle ground in this issue. The one or the other must exercise ultimate control, and no third party with authority to seize the child and rear it has ever been found."

Professor Rothbard also discusses the importance of realizing the unique and individual character of the learner. "The lack of equality–in tastes, ability and character–is not necessarily an invidious distinction, it simply reflects the scope of human diversity. Enthusiasm for equality should actually be viewed as anti-human. It tends to repress the flowering of individual personality and diversity, and indeed, of civilization itself . . ."

Compulsory Education Bibliography. Center for Independent Education. (10¢)

This brief bibliography is not intended to annotate all criticism of compulsory education. It sees criticisms as taking two forms, a proliferation of attacks on the effects of compulsory education and a few challenges on the concept itself. The latter is our concern here.

As a third in a series of topical bibliographies, the Center offers a review of a few substantive articles about compulsory education.

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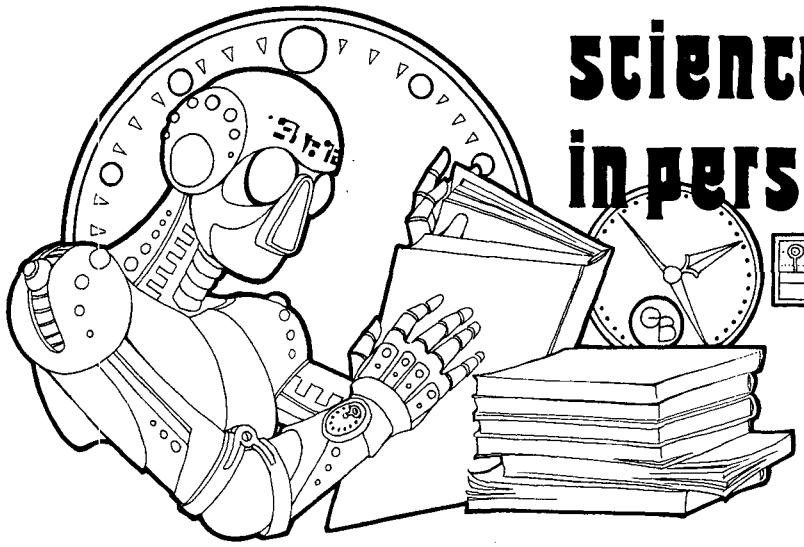

science fiction in perspective

JOHN J PIERCE

John Pierce's Science Fiction column alternates monthly in REASON *with Davis Keeler's Money column.*

"What one man can imagine, another can make real," Jules Verne once remarked.

Science fiction has certainly changed men's imaginations. How much it has changed the world as a result is a question that might well be tackled by social scientists. But Donald A. Wollheim, a prominent editor in the field, has gone so far as to say we are "living in a science fiction story."[1]

And while we must be wary of exaggeration, it is significant that in a world that is so much the product of scientific invention and discovery, Isaac Asimov has observed that at least half the really creative scientists have backgrounds that include reading S.F.

"It could be argued that a scientist's interest in science fiction is merely a reflection of his professional preoccupation," he noted. "I do not believe this is often the case, however, since one rarely begins reading science fiction in adulthood. The habit starts in adolescence, and interest in science is stimulated by the reading, rather than the reverse."[2]

Critics and scholars often argue the sterile issue of whether science fiction "prophesizes" the future. Hugo Gernsback, founder in 1926 of the first science fiction magazine, *AMAZING STORIES,* even argued that this was the genre's true purpose—"extravagant fiction today, cold fact tomorrow" was his magazine's slogan.

Sober critics like James Blish and Damon Knight have pointed out that no story has ever predicted the details of any development with great accuracy, however—and there have been all kinds of "forecasts" in science fiction that never came true in any sense.

DREAMS COUNT

But this is beside the point. Science fiction projects possibilities of things that *might* be done, given certain scientific advances. It creates dreams. And it is the dreams that count.

When Verne, in 1863, wrote *FROM THE EARTH TO THE MOON,* he was a poor prophet in the technical sense. His space gun could never have worked. The passengers in his shell would have been reduced to jelly—even if the shell hadn't burned up on its way through the atmosphere.

Yet Verne stimulated men's imaginations because of his realistic attitude towards the future of science. Unlike Cyrano de Bergerac or even Edgar Allan Poe, whose accounts of lunar journeys were really satires or burlesques on obvious "impossibilities," he never doubted that men could go to the Moon—and would.

"I remember well how the thought struck me of making calculations for rockets," wrote space pioneer Konstantin Eduardovich Tsiolkovsky. "I think the first seeds were sown by the imaginative tales of Jules Verne, which assailed my mind. I was assailed with a sense of longing, and this set me to thinking in a specific way."[3]

Tsiolkovsky was 17 at the time, in 1874. Before the turn of the century, this provincial schoolteacher in Kaluga, Russia, had worked out the theory of liquid fuel rockets that is the basis of space flight today. His work was duplicated in 1919 by Robert H. Goddard and in 1923 by Hermann Oberth, both of them early readers of Verne and other science fiction writers.

In a remarkable Vernian novel called *BEYOND THE EARTH,* begun in 1896 and completed in 1916, Tsiolkovsky himself anticipated space walks, lunar rovers, life styles of weightless environments, recycling of air and wastes, and many other aspects of the space program—and he never doubted any of it would come true, either.

Nor did Fritz Lang, the German motion picture director who in 1929 hired Oberth as technical advisor for his *FRAU IM MOND,* and tried to assist Oberth in the work of the Verein fuer Raumschiffahrt (Society for Space Travel). Some scenes in the film, of a huge two-stage rocket being moved on tracks from its assembly building to the launch site, are uncannily like those at Cape Kennedy. Lang even invented the countdown.

It was only the science fiction readers who took such things seriously in those days. Oberth's work stimulated popular writers like Otto Willi Gail (whose *THE SHOT INTO INFINITY* used a three-stage rocket very much like the Saturn-Apollo system in 1925) and Hans Dominik. Lang was familiar with both, and with Kurd Lasswitz, whose *ON TWO PLANETS* (1897) was as popular in Germany as Verne's works were elsewhere and which had much to do with planting the seeds of Oberth's own dreams.

SPACE TRAVEL

Publication of Tsiolkovsky's works touched off a similar interest in space

travel in the early years of Soviet Russia. Aleksandr Belyaev and others wrote space travel stories—Tsiolkovsky himself wrote the introduction to one of them (another was titled *THE STAR KETS,* using his initials as an acronym). But the rise of Stalin, like that of Hitler in Germany, killed off early interest in space research—though not in rockets.

America actually lagged behind Russia and Germany in the 1920's as far as space-consciousness was concerned. Goddard's work was even sneered at in the *NEW YORK TIMES.* Possibly this was a reflection of the fact that science fiction here was still dominated by the Edgar Rice Burroughs school of "scientific romance," which didn't take scientific possibilities very seriously.

In fact, when Gernsback wanted to redress the balance, he had to do so by publishing translations of German science fiction novels by Gail and others, and articles like Hermann Noordung's "Problems of Space Flying." These provided the background for the more realistic space fiction of Robert A. Heinlein and others that was to develop in the 1940's. It was George Pal's *DESTINATION MOON* (1950), on which Heinlein served as technical advisor and scriptwriter, that finally began to make the American public at large space-conscious.

Space travel is the most obvious science fiction dream come true, but not the only one. Igor Sikorsky, for example, was stimulated by Verne's *ROBUR THE CONQUEROR* to build the world's first practical helicopters. Simon Lake, who built the first submarine to be navigated in the open sea, also gave credit to Verne. Leo Szilard's interest in splitting the atom came from H. G. Wells' *THE WORLD SET FREE.*

GENERAL INFLUENCE

In most cases, of course, the influence of science fiction is more general—a stimulus to invention and discovery in the broad sense. And if the stimulus of imagination provided by science fiction has helped shape the future, it has also helped in cultural adaptation to a world in change. As Alvin Toffler points out:

"Science fiction has an immense value as a mind-stretching force for the creation of the habit of anticipation. Our children should be studying Arthur C. Clarke, William Tenn, Robert Heinlein, Ray Bradbury and Robert Sheckley, not because these writers can tell them about rocket ships and time machines but, more important, because they can lead young minds through an imaginative exploration of the jungle of political, social, psychological and ethical issues that will confront these children as adults."[4]

While science fiction has traditionally been apolitical in the narrow sense, it has been concerned with the impact of change on society and human institutions. Even in the days of the "pulps," it sometimes fulfilled this role—the original version of Buck Rogers, a story called "Armageddon 2419 A.D.," for example, dealt with the impact of advanced technology on guerrila warfare and was serious (if not literate) speculation.

MIXED BLESSINGS

Many of science fiction's dreams have proved mixed blessings—one hardly need mention that atomic energy brought with it the atomic bomb (but S.F. anticipated that too, Wells as far back as 1913), or that technology by itself hasn't cured all our social ills (but then, few science fiction writers thought it would).

And not all dreams have turned out to be worth having in reality. The utopian dreamers, from Plato and More to Bellamy and Wells, had much to do with the rise of collectivism—whether in the form of Communism or the welfare state or the military-industrial complex. Utopia turned out to be a bright cloud with anything but a silver lining.

But perhaps the only cure for bad dreams is better ones. Man seems to evolve only by trying to turn his dreams into reality—a point made much of recently in *MAN OF LA MANCHA* and elsewhere. Science fiction is almost always humanistic and anti-authoritarian (even in the Soviet Union, where the genre in its post-Stalinist renaissance was a far cry from the leaden preachments of Socialist Realism), and is today one of the few places where the dignity of man is taken seriously.

Certainly S. F. can popularize social ideas as such—Heinlein's *THE MOON IS A HARSH MISTRESS* did this so well for libertarianism that a lot of readers didn't even notice what the novel did with artificial intelligence and the biological and social ecology of a new environment.

But it will only be through its imaginative appeal that libertarian science fiction will have any lasting impact. Preachments or lectures disguised as stories preach only to the converted, and science fiction that does not create the same "sense of longing" Tsiolkovsky felt in another sphere is unlikely to have any influence.

Or to put it another way, in the realm of futurism, science fiction provides, not the catechism, but the mythology.

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[4] Toffler, Alvin, *FUTURE SHOCK* (Random House 1970), pp. 376-77.

foreign correspondent

Manila, Philippines, Thanksgiving Day

Over two months ago, President Marcos proclaimed martial law, really the absence of law, and when asked for his assessment of the "new society," he replied, "We have crossed the hump on the first problem of peace and order, and we are maintaining prices which is the second problem. We are now on the third problem which is land reform." (All these noble goals could be found in the platform planks of nearly any presidential candidate.) According to the controlled press, crime has almost been eliminated. Manila's first major crime was a bank robbery that was quickly solved within two weeks; the criminals were jailed. With the suspension of opposition news media, no one really knows if there is crime or there isn't—except the victims.

But martial law has an appeal that seduces most Americans living here and many Filipinos. The streets of Manila are cleaner. This is hard to believe. The cops operating the Filipino version of the

"speed trap" are forced to return the 20 peso fine (about $3.20) and will probably be fired next week. Since martial law took effect on 23 September 1972, the President has ordered a nationwide roundup of suspected subversives, political warlords, and crime czars; he has also fired nearly 5,000 "notoriously undesirable" bureaucrats. But he has also jailed 26 newsmen (including the publisher of the *MANILA TIMES,* Joaquin Roces), TV journalists, and others critical of him and his policies. There are "political detainees," estimated at more than 100 persons, confined in two military military camps outside Manila—holding at present three senators, several congressmen, provincial officials, two publishers, and more than 20 journalists. Their trials are being delayed by Marcos to give them a chance to return to the fold and support his "new society." If they don't, they rot.

"IT'S A DELEGATION FROM THE GREEK MILITARY DICTATORSHIP—THREATENING TO SUE YOU FOR PLAGIARISM."

By presidential proclamation we may not criticize the new martial law or the "new society," but there is a seductiveness in this that has all the appeal of a George Wallace speech to hard hats. The appeal is based on what is seen and not seen.

In Manila when the rich are robbed (this is especially true for Americans), most often the police will lend their support but seldom, if ever, is the robber caught and the loot returned in sort of "Robin Hood theory" of the rich being able to afford donating to the poor. Now, however, when the P. C. (Philippine Constabulary) are notified, the chances are very good that the items stolen will be returned. This is *seen.* It is impressive. As impressive as the elimination of crime in Boston. What is *not seen* are the bloodied heads of those suspected of participating in the crime. Under martial law, there is no "fine grind" for the wheels of justice, only "coarse."

Stories abound in Manila's American community about how the wife's car was broken into, all the Christmas packages stolen, and the P. C. returned every one of them the following day; and people smile and feel safer. They do not see the jails nor hear the silent opposition.

Somebody once said that the price of freedom is eternal vigilance. The seductiveness of martial law is just the opposite, nonvigilance. One must close one's eyes and return to the infant state in which the benevolent father made all the difficult decisions and gave you permission to go out and told you when to return (we have curfew from midnight until 4 a.m.). Dictatorship has a strong appeal; it gets things done, makes trains run on time, and is not hampered by lengthy trials or a search for justice. But very few people who say they believe in democracy, as the citizens of the United States and the Philippines do, would admit they adhere to the concept of sending opponents to jail without habeas corpus or a foreseeable trial, or of curbing free speech, or of making criticism in any manner of the acts of the administration punishable by fine and jail sentences. But at the same time, they are seduced by martial law, including a good many "liberals."

And the seduction will continue for a long time, at least until the Constitution Convention proclaims both a parliamentary form of government and Marcos as premier. If they refuse this option, he can always throw them in jail (one of the delegates, Napoleon Rama, is in jail now), or refuse to recognize the new constitution. There has been no condemnation of the reversion from so-called democracy to martial law by either the United States or other "free" governments. Martial law will continue to seduce "freedom loving peoples" who are concerned with efficiency and "law and order" *at any price,* as opposed to those who care for freedom and equal rights for all, not just for some.

LARRY NELSON

book review

REVIEWED BY ROBERT A. ROBINSON

HOW TO START YOUR OWN PRIVATE SCHOOL—And Why You Need One. By Samuel L. Blumenfeld. New York: Arlington House. 1972. Pp. 378. $9.95.

If this country is ever to have a libertarian society, the ideas most of the people accept as true will have to be changed. And the place to begin this reeducation is in private, profit making schools. Blumenfeld's book explains how these schools can be established and run using free-market economic principles.

The author is a professional writer and like most people received his formal education in the tax supported public schools. Until a few years ago he believed the public schools were doing a good job of educating the children and young adults of this country.

Before starting this book, Mr. Blumenfeld spent a year and a half in the public schools of Boston as a substitute teacher. He did this to see how the public school systems operate from the inside.

In the first three chapters the author describes his experiences, "at times depressing, at times exhilarating," which convinced him that public education is, by its own nature, unable to provide a good education or promote the principles of a free society.

Blumenfeld traveled extensively throughout the South and visited many of the new private schools there and talked to the people who run them. Even though many of these schools were started to avoid the Supreme Court compulsory integration orders of 1964 and 1969 they quickly evolved into learning institutions of high quality. He also puts to rest the "segregation academy" image created by the establishment press.

While nearly all of these new schools permit only white children to be enrolled, the academic standards are uniformally higher than in the public schools.

Although Blumenfeld seems to have some racial biases and is a traditional conservative in his moral beliefs, he is a libertarian in the economic sphere. Several times he states just why the only rational means of providing high quality education for anyone willing to work for it is through the development of profit making private schools.

In the eleventh chapter, Blumenfeld tells of the first franchising company in private education, the Living and Learning Centres, Inc., of Waltham, Mass. This enterprise was started in March 1970 through the combined efforts of Grace L. Mitchell and George Naddaff. Ms. Mitchell operated her own school, the Green Acres Day School for thirty years. Mr. Naddaff is a franchise owner of 27 Kentucky Fried Chicken units. The company had 11 day-care centers operating by late 1971 and now offers shares of its stock to the public.

This book not only answers virtually every question a person could ask about private schools, it provides seven appendices containing the names and addresses of many different organizations which can help you start and operate a private school at a profit.

The title of this book isn't just a clever eye catcher, it means what it says. If a person seriously wants to establish a private school, this is the book to read.

Robert A. Robinson is a reporter with the LOS ANGELES HERALD-EXAMINER. *He graduated from Los Angeles City College with the highest grade point average in the journalism department, and he is a founding member of Libertarian Alternative.*

publisher's notes

• **REASON PRICE INCREASE:** Effective immediately, the cost of all issues of *REASON* has been increased to $1.00, except for extra-length Special Issues, which will sell for $1.50 each. The price increase also applies to orders for back issues. Many back issues are in limited supply, and orders will be filled on a first come-first served basis. All orders for back issues should be accompanied by payment in full. Save money by subscribing *now* at the present low rate of $9.00 per year.

• **NEW CONTRIBUTORS:** *REASON* is pleased to announce the addition of three new staffers to our masthead. We welcome two new foreign correspondents to add to our regular correspondents in Argentina and Belgium: Larry Nelson, reporting from the Philippines, and Marc Swanepoel, from Pretoria, South Africa. Our initial report from the Philippines appears in this issue. It is accompanied by the work of our third new *REASON* staffer, cartoonist Steve Miller. Miller is a regular contributor to *NEWS AND OBSERVER,* Raleigh, N.C.

• **LEGAL SETBACK:** Chris Bates and Hank Hohenstein, libertarian activists, were found guilty in federal court on December 22, 1972, of charges stemming from a protest on an IRS seizure in San Diego on May 9th. The three week trial contained many errors which can lead to a mistrial or reversal on appeal. Specifically noteworthy was district Judge Nielsen's admission that the entire legal profession had an inability to define conspiracy. Additional funds are urgently needed. For those making donations we will send one page of trial highlights. Make checks payable to Libertarian Defense & Education Fund, Suite K 2550 Via Tejon, Palos Verdes Estates, CA 90274.

• **LIBERTARIAN FACULTY REGISTRY:** As announced in this column in *REASON*'s January issue, *REASON* is cooperating with *OUTLOOK* in compiling a listing of libertarian faculty members in American and Canadian colleges and universities. The original proposal was conceived by Walter Block, editor of *OUTLOOK.* Readers are invited to submit proposed names for listing on the Registry. Please send name, department, and university for each faculty member. *REASON* plans to publish its initial listing in next month's issue.

• **"MINERVA OCCUPATION" REPUDIATED:** Recently a number of libertarians received a flyer from "International Maritime Legal Research" in Toldeo, Ohio, describing a projected expedition to "occupy" the Minerva Reefs, site of the projected Republic of Minerva (see "Designing a Free Country," *REASON,* December 1972). Many people were disturbed by what appeared to be a hasty and ill-conceived plan set forth in the flyer. *REASON* has checked with the provisional government of Minerva and has learned that the group sending out the flyer was unauthorized to do so, and has since been repudiated by both the Minerva government and Caribbean Pacific, the land development company. Thus, there is no substance to the proposed expedition. Further progress on the Minerva new-country project is dependent on the outcome of forthcoming negotiations with the government of Tonga.

• **COMING NEXT MONTH:** *REASON*'s April issue will feature an exclusive interview with real estate attorney Bernard H. Siegan, author of the landmark book, *LAND USE WITHOUT ZONING*. In the interview, Siegan discusses innovative free market approaches to land use planning. Also included in the April issue is law professor Michael E. Levine's significant article, "Do We Need More Airports?", which applies free market principles to the problem of airport planning, and discusses the use of rational pricing to reduce airplane noise. *NATIONAL REVIEW* Associate Editor Alan Reynolds contributes a provocative article comparing the approach to monetary theory taken by Chicagoites, such as Milton Friedman, with the Austrian approaches of Ludwig von Mises, Murray Rothbard and Hans Sennholz. *REASON*'s May issue will feature *REASON*'s second exclusive interview with Nathaniel Branden, plus other exciting articles and features.

movies

REVIEWED BY
CHARLES BARR

• If you've seen the play **MAN OF LA MANCHA,** prepare to be disappointed in the movie. The transition from stage to screen has left the words and music intact, but little else. In its blatantly literal re-creation of the Cervantes/Don Quixote legend, the film has robbed the character of much of his heroic quality, while emphasizing his madness and the futility of his quest. For instance, the "tilting at windmills" scene took place partially off-stage in the play. It was amusing. On the screen, with a real windmill on a real Spanish plain, it is ludicrous. In the play, the audience could appreciate the inner logic of Don Quixote's quest "to right the unrightable wrong," even while laughing at his mad and futile deeds. In the film, the character of Don Quixote is illuminated almost entirely from the outside. The madness and futility remain, but the inner character shines through only feebly and intermittantly. Peter O'Toole's wooden, uninspired performance in the title role accounts in large measure for the dullness of the film's emotional edge. The lack is more keenly felt because the movie does boast two fine supporting performances. Sophia Loren is magnificent as the fiery, angry kitchen-wench Aldonza, trapped in life's gutters and contemptuous of everything and everybody. James Coco plays Don Quixote's warm-hearted, proverb-quoting servant Sancho with dignity and aplomb. The musical sequences vary wildly in their effect; some of the songs flow naturally, while others seem tacked on. "The Impossible Dream" suffers from visual poverty—Peter O'Toole stands like a martinet in the early morning light, singing (or more precisely, "lip-synching") as if he were reciting lines. The soul of the play, its burning sense of passionate commitment and conviction, have all but vanished in the film. Only the words and music remain, and they are not enough. Rated "PG".

• Suspense! Thrills! Conflict! Excitement! It's all there, and in abundance, in **THE POSEIDON ADVENTURE,** a chronicle of the efforts of a dozen passengers to survive in an overturned and sinking ship. Gene Hackman, as a resourceful Angry Young Minister with a "Ben Casey" personality, heads an all-star cast. Red Buttons is a mild-mannered haberdasher; Carol Lynley is a member of a touring rock group; Ernest Borgnine is a veteran cop; Stella Stevens is his sullen wife; Leslie Nielsen is the Captain; and Shelley Winters is an archetypical Jewish Mother. This movie has to be seen from the beginning—the capsizing of the ship, one of the film's most exciting scenes, occurs in the first 15 minutes. Many of the special effects are truly spectacular, es pecially the overturning of the ballroom during the ship's New Year's Eve party. The suspense is maintained as the survivors, led by Hackman, venture deeper and deeper into the ship's interior, pursued by the rising water. The upside-down vessel produces a curious disorientation—one has to keep reminding oneself which way is up. A few moments of comic relief are provided when a boy (Eric Shea) enters one of the ship's bathrooms to discover all the toilets suspended from what has now become the upper walls and ceiling. The dialogue, crisp and tight, seems overdramatic at times but keeps the plot moving. The only flaw of any consequence is a rather contrived rivalry between Gene Hackman and Ernest Borgnine. It appears that producer Irwin Allen, formerly the brains behind such hokey television fare as "Lost in Space" and "Land of the Giants," has finally launched a winner with *THE POSEIDON ADVENTURE.* Rated "PG".

• The line that separates tragedy from comedy can sometimes be very thin. A curiously offbeat movie, **PETE 'N' TILLIE,** crosses that line several times, more often than not leaving the audience stranded on the wrong side as it traces eleven years in the marriage of a middle-aged, middle-class couple. Carol Burnett successfully sheds her television image and mannerisms to become a "plain-Jane" housewife, while Walter Matthau is more typically cast as a charming rat with some redeeming qualities. Together they make a believable if not always lovely couple. Geraldine Page, however, seems oddly out of place as Carol's "best friend," a neurotic, overbearing busybody. Episodes detailing marital infidelity, mental breakdown and the death of an only son, are mingled with a slapstick fight over a woman's age, and a running gag in which a family sneaks extra gasoline into a neighbor's Volkswagen to make him believe he's getting fantastic mileage. These constant shifts in mood give the film an oil-and-water quality, with the mixture somewhat smoothed over by inventive and frequently witty dialogue. The performances are superior but slightly understated, helping to blur the movie's tonal transitions. The characters are sketched, rather than finely drawn; they seem real enough, but the audience does not get to fully know them. In concentrating on relationships, the film has somehow lost sight of its characters. When Carol Burnett accuses Walter Matthau of hiding his true feelings, he replies, "Most true feelings deserve to be hidden"—a neat summary of what the film lacks. The performers are impressive, the humor is effective, but as a whole *PETE 'N' TILLIE* doesn't quite hang together. Rated "PG".

• Depending upon your point of view, **CHILD'S PLAY** is (pick one): a psychological thriller, a horror flick, an allegory of good and evil, or a case study of diabolical possession. The film contains elements of all the above types, but essentially it is a black comedy, artistically midway between *FOOL'S PARADE* and *ROSEMARY'S BABY.* Certainly it takes a macabre sense of humor to use a Catholic boys school as the setting for a series of mysterious and evil deeds, including the gouging out of a student's eye and the desecration of an altar. The students are all creepy young fanatics, bent upon some secret, incomprehensible purpose. The priests and teachers range from normal to neurotic to paranoid, engaging in endless dramatic confrontations and involving the audience in the fun of guessing who is doing what to whom. The actors tackle their demanding roles with gusto, turning in first-rate performances. James Mason heads the cast as a crusty, old-fashioned Latin teacher, hated and feared by the students but now visibly crumbling under the strain of caring for his dying mother. Robert Preston is Mason's arch-rival, a jovial English teacher bursting with energy and goodwill for all. Beau Bridges is a natural as the school's new young coach, a former student who returns to be confronted with the sinister happenings, and finally traces them down to their root. The supporting players are memorable also, especially David Rounds as a troubled young priest in the early stages of renouncing his vows. The parochial school setting makes special effects unnecessary; the atmosphere positively reeks with supernatural menace. A "holy horror," as it were. Rated "PG".

trends

THE COSTS OF THE CAB

Critics often castigate government regulators for distorting market relationships and raising costs to consumers of the products or services of the regulated industry. Seldom, however, are such criticisms made *quantitative,* making it difficult to estimate the true cost of such intervention. Now, however. Prof. Theodore Keeler of the University of California (Berkeley) has published the results of his analysis of the costs to consumers of CAB regulation of interstate airlines.

Prior to Keeler's work the most complete analysis of this problem was that of William Jordan of UCLA, whose comparison of California (unregulated) intrastate routes with interstate Northeast Corridor routes led him to conclude that 1965 interstate fares would have been between *32 and 47% lower* in the absence of CAB regulation. Jordan's comparison was based on a rather limited set of cases, however. In order to generalize the analysis, Keeler developed a detailed cost model for interstate air fares and used it to predict hypothetical unregulated cost-based fares for 30 major domestic markets. To test out the model, Keeler used it to predict fares on the unregulated California routes, which it did quite accurately.

The results were striking. Using 1968 data, the model showed that regulated airfares had markups over the estimated unregulated fares ranging from *20 to 95%,* depending on distance. For 1972 data, the markups ranged from 48 to 84%. Keeler assesses these results and concludes that the customary arguments for regulation of air fares are a farce. As both Jordan and George Stigler before him have argued, Keeler affirms that "Airline regulation is basically a government-enforced cartel existing for the benefit of the regulated firms . . . Given that airline regulation on high-density routes extracts high social costs and confers very few benefits on anyone, the case against it is strong indeed."

SOURCES:

- *AIRLINE REGULATION IN AMERICA,* William A. Jordan, Baltimore: John Hopkins University Press, 1970.
- "Airline Regulation and Market Performance," Theodore E. Keeler, *THE BELL JOURNAL OF ECONOMICS AND MANAGEMENT SCIENCE,* Vol. 3, No. 2, Autumn 1972, p. 399. (Note: *THE BELL JOURNAL* is available without charge to those interested in economic analysis of regulated industries. Contact P. E. Davis, *THE BELL JOURNAL,* American Telephone and Telegraph Co., 195 Broadway, New York, NY 10007.)

DEFLATING THE AIR BAG HYPE

The federal government's plan to force air bags on auto makers and buyers has come under increasing attacks of late. Basically, the Department of Transportation plan would not only require air bags as crash-protection devices, but also do away with seat and shoulder belts. As Brock Yates pointed out in these pages some two years ago (*REASON,* March 1971), air bags, unlike belts, protect only in front-end collisions, and more seriously, can go off accidentally, causing accidents that otherwise would not have occurred. Lap and shoulder belts have proved very effective in preventing serious injuries; the only problem is that their use is voluntary—and many people choose not to use them.

These points have been raised forcefully in recent attacks on DOT's plans. The *LOS ANGELES TIMES* has editorialized that "the whole thing is too chancy to risk," and has called the plan "nonsensical." The American Automobile Association in November called on DOT to rescind its plan, pointing out that in public demonstrations to date air bags have an "almost 100 percent failure rate." AAA criticized DOT and Ralph Nader for trying to sell the public a bill of goods, and for ignoring the documented effectiveness of the 3-point lap and shoulder harness. While DOT has spent some $10 million on air bag development, it has spent almost nothing on improved belts and harnesses, owing to the agency's hostility to voluntary safety devices.

The most recent development was a 2-1 ruling by the Sixth Circuit Court of Appeals on December 5 that DOT's plan to require installation of air bags in 1976 model cars must be delayed until new ways of testing the devices are developed. The court held that auto manufacturers could not be required "to develop an effective restraint device in the absence of an effective testing device which will assure uniform, repeatable, and consistent test results."

SOURCES:

- "Nonsensical Approach to Auto Safety," Editorial. *LOS ANGELES TIMES,* 24 November 1972.
- "AAA Asks Suspension of Rule Requiring Air Bags in Autos," AP (Washington), 19 November 1972.
- "Air Bags in Autos May Be Delayed," *LOS ANGELES TIMES,* 6 December 1972.

LA TAXI MONOPOLY ERODING

For many years the people of Los Angeles have been plagued by a government-granted monopoly on taxicab service. The central city, the major business districts, and Los Angeles International Airport are all served only by Yellow Cab Company. Finally, in July 1971, the city government modified the terms of the franchise to permit limited competition in the lower-traffic areas of West Los Angeles, West Hollywood, and the San Fernando Valley. After a year of competitive service in these areas, the city's Department of Public Utilities and Transportation (PU&T) conducted a study of its effects.

The study clearly demonstrated the benefits of competition. Taxi service in the three test areas has markedly improved, with a significant share of the business going to the four other companies involved. At the same time, Yellow Cab's service has continued its three-year decline. In particular, Yellow Cab showed a sharp increase in "no shows" and "lost orders" compared with previous years. This evidence was enough to convince the *LOS ANGELES TIMES,* which recommended on 3 October that Yellow Cab's monopoly be ended throughout the city.

Despite the evidence of its own study, PU&T opted for the more traditional regulatory agency response. After a promise by Yellow Cab to improve its service by adding 100 more cabs, PU&T unanimously recommended that the City Council continue the monopoly for at least the next year. "Then if the company fails to comply," they said, "it is recommended that a competitive taxicab franchise be granted."

SOURCES:

- "Yellow Cab's Phone Answering, Response Times Hit in Report," Erwin Baker, *LOS ANGELES TIMES,* 2 October 1972.
- "Taxi Monopoly Hurts the Rider," *LOS ANGELES TIMES* editorial, 3 October 1972.
- "Continued Taxicab Monopoly Urged," Erwin Baker, *LOS ANGELES TIMES,* 6 October 1972.

reason profile

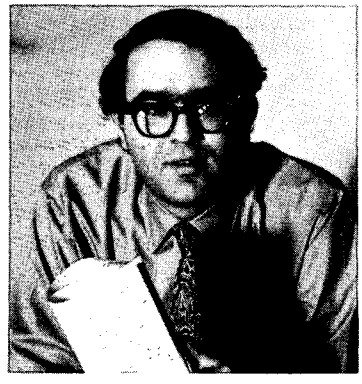
A year and a half ago the Libertarian Party did not exist. Today it has over 2000 members nationwide, has received large amounts of publicity in the recent political campaigns, and garnered one Electoral College vote for its candidates, John Hospers and Tonie Nathan. The main driving force behind the formation of the Libertarian Party (and its first Chairman) has been a twenty-nine year-old Colorado advertising man, David F. Nolan, who is now on the executive committee of the LP and is editor of the *LP NEWS.*

Dave Nolan majored in political science at MIT and received his degree in 1965. While in school he became interested in the writings of Ayn Rand and became active in politics via the presidential candidacy of Barry Goldwater. He subsequently was involved in Young Americans for Freedom, Young Republicans, and Society for Individual Liberty, and has published in conservative and libertarian publications. The Libersign Emblem, widely used by libertarian activists, is his creation.

His professional career involved four years as an associate editor of an industrial magazine before he switched into advertising three years ago. "This means I get paid lots of money for doing what I like to do best, anyhow . . . thinking up clever ways to persuade people to do something." (A recent brainstorm involved naming a home cheesemaking kit "The Incredible Cheese Machine", after Richard Grant's libertarian classic *THE INCREDIBLE BREAD MACHINE.*)

Mr. Nolan's leisure interests include sports cars, reading science fiction ("Heinlein, rather than Rand, is still my number-one culture hero."), writing, and listening to rock and jazz records. Mr. Nolan's partner in his political and writing activities is his wife Susan, who presently chairs the Libertarian Party. ("I am great at dreaming up ideas, but lousy on details; Susan translates grandiose ideas into workable day-to-day projects, and then sees them through."). Among the many interests the Nolans have in common is a passion for science fiction and horror movies, and both enjoy keeping snakes as pets.

Although the Libertarian Party has grown from the days when it consisted of the Nolans and a few of their friends who were similarly disenchanted with the drift of contemporary American politics, it still has a long way to go before it becomes a major force in the political scene. As the LP grows it will no doubt be through the interest and hard work of people such as Dave and Susan Nolan.



letters

DEBT REPUDIATION?

I wish to criticize the editorial in *REASON*'s Free Country edition. It mentioned that we are "virtually locked into a continuously-expanding, ultimately self-destructing bureaucratic monster" and cited (among others) the problem of the national debt and Social Security. Accepting as final Dr. Hospers' position ("He replied apologetically that since people had bought government bonds and paid Social Security taxes in good-faith expectation of future returns, taxation for these programs would have to continue until all present obligations were met."), Poole resigns himself (and others) to more taxation. Do I owe those people anything? Is it justice to pay off profiteers and parasites (no matter how ignorant they may be of reality) and punish me, your friends, the totally innocent?

I concur with those who see justice in a policy of repudiation, for this would a) show people the consequences of dealing with criminal governments, b) prevent the continued state of ignorance about how government secures its existence by granting special favors and forcing others to pay them off, and c) at least not further tyrannize the innocent.

Ben Seifert
Poway, CA

MR. POOLE REPLIES:

Begging reader Seifert's pardon, I do *not* resign myself or others to continued taxation. I fully agree that one cannot be held responsible for a debt one did not voluntarily assume (and voting for the less evil candidate out of self-defense can hardly constitute voluntary acceptance of a share of the national debt). By citing Dr. Hospers' opinion, I merely wished to point out the enormity of the problem involved in getting out from under a bloated government.

KNOTTY PROBLEMS

I read with great interest your interview with Mike Oliver [*REASON,* December '72]. Some time ago, when I first became acquainted with his activities, I was heartened to hear that he shared my reservations about the way a number of aspects of social living are dealt with under the American governmental system. I ordered a copy of his *A NEW CONSTITUTION FOR A NEW COUNTRY* in the expectation of seeing improved ways of handling these questions; or, at the very least, of seeing thought-provoking failures. Instead, I was disappointed to find many of the key areas glossed over in the most superficial manner—apparently not even having been very seriously thought over.

Item: A raw, young country, just getting started and growing fast, presents rather different governmental problems than a mature society with an established body of tradition and way of life. How can a government be designed to deal successfully with both situations and with the transition between them?

These "growing pains," and the failure of the Founding Fathers of the U.S. to adequately cover the problems arising from them in the Constitution, left the way open for many of the present abuses of governmental power. Mr. Oliver recognizes the different situations of new vs. mature societies (he divides them at the point where 40,000 persons are resident "on a permanent basis"). However, he proceeds to set up a system for the mature society alone; for the interim, he merely posits that "governmental functions" will be handled by "the Corporation . . . institute(ing) its own form of government." Aside from this appearing to be the very sort of "corporate state" he fears with respect to proprietary communities, he doesn't even offer any further information about the nature of this government, except to assert that it will be "in accordance with the principles set forth in the Declaration of Purpose and Constitution."

Item: How can legal procedure be established to protect the innocent from more than a minimal exposure to abuse of official power, while at the same time affording the authorities the maximum freedom feasible to move against the guilty? Again, Mr. Oliver avoids the question. He places stringent restrictions on the right of the government to act against individuals; then, to give the government scope to suppress crime, blandly declares that "guilty persons shall not be permitted to hide behind such technicalities of law, which clever attorneys regularly utilize in various countries to permit free and unhindered criminal and subersive activities by well-known bosses of organized criminal or treasonable entities." Of course, this provision is circular: the whole purpose of legal proceedings is to determine guilt; one man's "clever attorney" thinking up "technicalities of law" to shield the guilty is another man's "resourceful defender of the innocent." If we know, *a priori,* that a defendant is a "guilty person," a "boss of criminal or treasonable entities," we can dispense with the trouble of a trial altogether and simply lock the fellow up on the spot!

Both of the above problems, as well as a number of similar ones I could cite from Mr. Oliver's book, are quite knotty, and I certainly have no panaceas for them. In the interview, it was mentioned that there have been revisions in the material of the Constitution, and that adaptations of it are being done at this time. Perhaps these will improve the document; I certainly hope so. But, in the form given in the 1968 edition, it shows a disturbing lack of interest on the part of the author in coming to grips with a wide variety of crucial point.

Erwin S. Strauss
APO SEATTLE

PROPRIETARY COMMUNITIES

I want to comment on Michael Oliver's remarks about anarchism and proprietary communities in the December issue of *REASON.* Mr. Oliver has criticized one sort of proprietary community, that proposed by MacCallum. In particular, he has remarked that most libertarians would reject it if the proprietorship were called 'government'. Presumably, this is supposed to suggest that such proprietorships are incompatible with libertarian standards of justice, though his remarks, even if true, do not establish that point; truth is not determined by majority opinion, even among libertarians. I would like to say something about this implicit issue.

The proprietary community which Mr. MacCallum has proposed is unlike existing governments in the following ways:

1. It acquires control over land by purchase and/or original use, not by conquest; and its control is financed by earnings on the free market, not by previously extorted taxes.

2. It acquires all its members by consent expressed through some form of contract, not merely the first generation, and this contract can perfectly well include the specification of limits on its powers, amounting in effect to a constitution.

3. It presumably allows the right of emigration to all members; few people would be likely to make a one-way trip voluntarily.

Now, Mr. Oliver's government would meet conditions 1. and 3. quite well; as for condition 2., Mr. Oliver has not been clear about this. If we are to assume that anyone within his government's territory can do anything other than aggressing against a citizen that he chooses—including defending himself, so long as his actions remain purely defensive—then Mr. Oliver has indeed set up a government with voluntary membership, but in doing so he has also set up what any anarcho-capitalist would call an anarchist social system. Otherwise, we must consider citizenship coerced, and Mr. Oliver will therefore have provided no safeguards against tyranny. This is particularly true if we consider that Mr. Oliver's constitution is ultimately to be interpreted by his government, just as Mr. MacCallum's contract by his proprietorship. What protection does he offer against abusive misinterpretations? It is fascinating to see a governmentalist arguing as newly discovered flaws in anarchism the same weaknesses that anarchists have long since shown to be present in government (see Benjamin Tucker's *Instead of a Book* for arguments of the same kind advanced fifty or more years ago). It seems that many libertarians will tolerate all sorts of abuses from a private organization, in structure and in action, as long as we call that organization "government".

Finally, let me note that there are other versions of anarchism than proprietary communities (if one wishes to call them 'anarchism'—I have grown indifferent to labels, for the most part, though I confess that I still like the term 'anarchism' *pour epater les bourgeois).* Most such include two additional safeguards in their legal institutions: the right of secession with the consequent unceasing feedback, and the right to appeal to a legal organization other than the one one presently has a contract with in one's own defense. When Mr. Oliver shows that these either are unnecessary or are included in his government—with the consequent possibility that all the subsidiary agencies he might permit could replace his government if it were inefficient—I will consider myself a governmentalist after the Oliver model, at least; for Mr. Oliver will then, equally, be declaring himself an anarchist, as I understand the term.

William H. Stoddard
Sunnyside, CA

AUTHOR REPLIES:

Regarding the comments by Mr. Strauss: I have already indicated in the interview that the government and company of the new country should be separated from the start. I also indicated that I, and some of my readers, have found errors in my book. The necessity to separate economics from government from the start is one of the most important modifications my new edition (when it comes out) will have.

Regarding legal procedures, I believe that too many criminals are getting away with murder. I also believe that one reason for this is a proliferation of laws in all countries. If we try to define

every crime, then those crimes not defined become "lawful". Even at that, I have no final answer to this problem. I am not claiming my book to be perfect, am not promising Utopia, and, as the postage paid return card at the end of my book clearly shows, I am open to suggestions.

Regarding Mr. Stoddard's critique: He has enumerated three criteria by which he judges Mr. MacCallum's book. I would like to add another one, namely the limitation against the absolute power which corrupts absolutely under *any* system. No amount of sophistry or verbal gymnastics can obliterate the fact that under MacCallum's system, the land owner would also be the judge, jury, policeman, and executioner, as well as moral guardian. Regarding the right of members of such a community to leave such a community, such a right could not be guaranteed if the land owner prohibited it. There is an island in the Indian Ocean, near Australia known as Cocos-Keeling (not to be confused with Cocos Island in the Pacific, which belongs to Costa Rica.) For a number of years, Cocos-Keeling was ruled by an individual proprietor who was the "law and the prophet" there. While the natives on that island supposedly had a right to leave their "paradise", the proprietor, in fact, prohibited that. The proprietor interpreted any rules and *agreements* as he wished, ruled the people in violation of some of the Australian laws which should have been applicable there. Finally, the Australian government (faulty as it is in many ways) sent in an investigator, and the last I heard the practices on that island have come to an end.

There are defects and imperfections in any one of the existing governments. And as my answer to Mr. Strauss shows, I am not claiming that my own constitution is perfect. But, what we have now in the U. S. is infinitely better than any scheme thus far proposed by the anarcho-capitalists. It is for this reason that I coined the phrase about some libertarians destroying bad government only to have them replaced with worse tyrannies. History proves this to be the case and most of today's anarchists are just as wrong as those we had in the past. In the foreseeable future, I foresee no system (including my own) that will be working perfectly. But let us not go back to the Dark Ages, via "proprietory community" feudalism, or similar systems. We have made real progress in enormously reducing the intertwinement between church and state. The next step then is to separate economics from state, not to go back to a Communist or fascist type of system where one agency (whether it is called "private" or "government") is in charge of performing the economic functions as well as the functions of protecting against force and fraud.

Mr. Stoddard's last paragraph indicates the possibility that he has not read my book. For, I have included a stipulation that a person may decide not to be a participant in the government if he so chooses. Also, in my interview, I stated that private police would not be prohibited. (It is permitted even in the U. S.) I do, however, maintain that there must be one standard, and that this standard is best summarized by stating that a person has a right to his life and property and must not initiate force or fraud against any other person or entity. Moreover, such key terms as "force", "fraud", "entity", "person", "personal right", "property", etc. are defined in my book.

Mike Oliver
Carson City, Nev.

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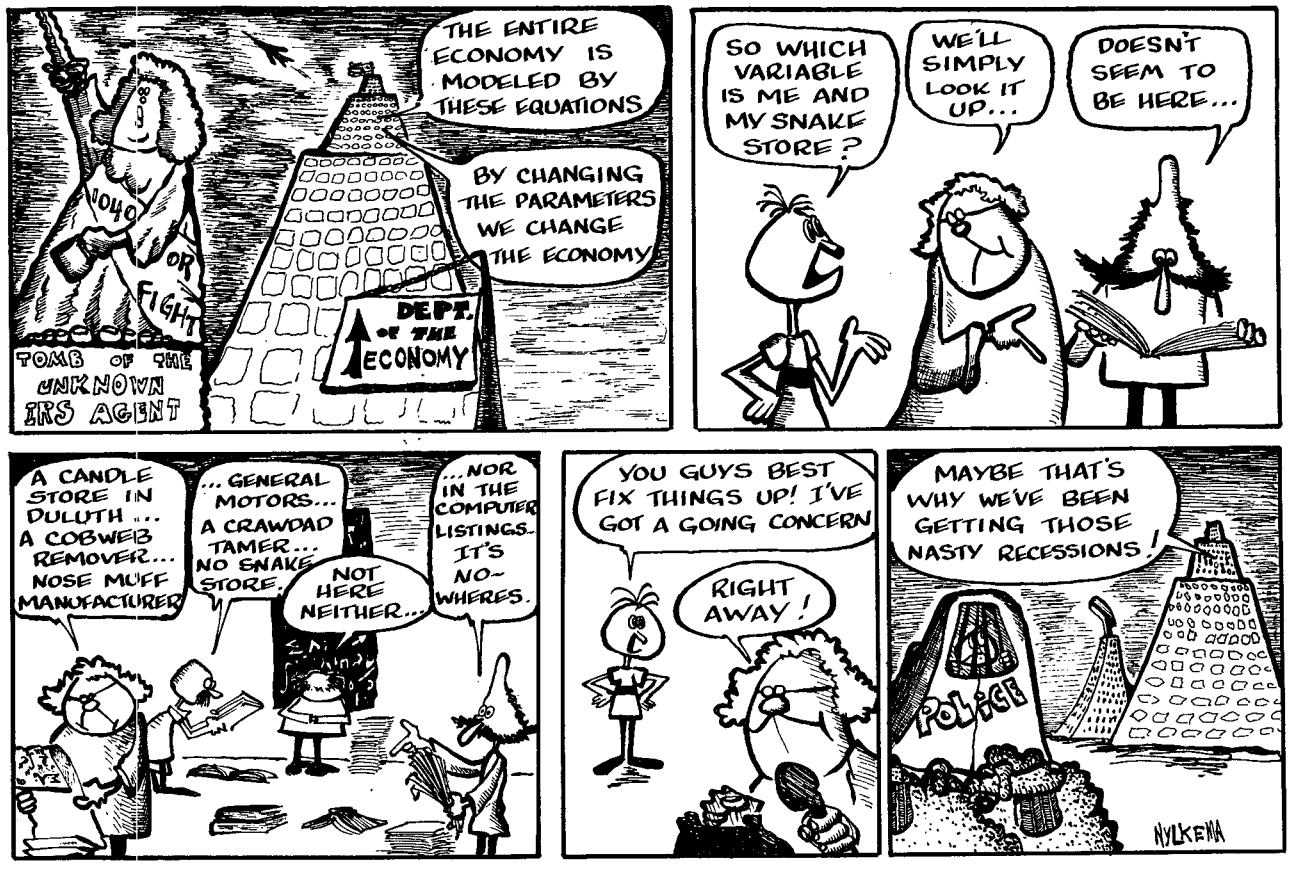
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BY CHANGING THE PARAMETERS WE CHANGE THE ECONOMY
1040 OR FIGHT
TOMB OF THE UNKNOWN IRS AGENT
DEPT. OF THE ECONOMY
SO WHICH VARIABLE IS ME AND MY SNAKE STORE?
WE'LL SIMPLY LOOK IT UP...
DOESN'T SEEM TO BE HERE...
A CANDLE STORE IN DULUTH... A COBWEB REMOVER... NOSE MUFF MANUFACTURER
...GENERAL MOTORS... A CRAWDAD TAMER... NO SNAKE STORE.
NOT HERE NEITHER...
...NOR IN THE COMPUTER LISTINGS. IT'S NO-WHERES.
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RIGHT AWAY!
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COMMITTEE FOR THE

ANTI-INFLATION AMENDMENT

To the Constitution of the United States

1. HARD CURRENCY MANDATE

After considerable research by economists, many people have come to the conclusion that economic problems—inflation, unemployment, depressions (and obviously the taxes to cure them all)—are **caused** by the Federal government, as it mismanages the money of the United States. The money supply fluctuates: when it expands too fast, we get inflation; when it slows down, we get unemployment. Americans are forbidden to own gold, and the balance of payments is overdrawn because of depreciating money. We the People can end all of that by passing a law to discipline our government:

> Section 1: IT SHALL BE THE PUBLIC POLICY OF THE UNITED STATES TO STABILIZE BY LAW THE SUPPLY OF MONEY IN CIRCULATION, AND THEREBY TO PRESERVE AND INCREASE THE PURCHASING POWER OF THE CURRENCY OF THE UNITED STATES.

This policy could be accomplished in a number of ways. The precise way chosen would be up to the Congress, the President, and the Federal Reserve System. Among the ways would be either using the commodity price of gold, or any group of commodities, as a base price, or by fixing the quantity of money, or the rate of monetary expansion, by law.

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> Section 2: CONGRESS SHALL MAKE NO LAW RESTRICTING THE FREEDOM OF WAGES AND PRICES. THE RIGHT OF CITIZENS TO MAKE CONTRACTS AND TO TRADE FREELY AMONG THEMSELVES SHALL NOT BE ABRIDGED.

This idea has been suggested by George Meany, President of the AFL-CIO, and by George McGovern during his election campaign. Richard Nixon supported this principle until 1971, and may someday support it again.

IF YOU SUPPORT THIS PROPOSAL, SEND YOUR NAME TO THE COMMITTEE.

3. CARTEL MONOPOLY PRICES FORBIDDEN

The government not only causes inflation and economic depressions, it sometimes makes things worse by price controls in favor of certain vested interests, and cheats the consumers because **competition** is against the law. We need competition in our free economy to make the system work.

> Section 3: THE GOVERNMENT OF THE UNITED STATES, OR OF ANY STATE, SHALL NOT, THROUGH ANY LAW OR ADMINISTRATIVE ACTION, PREVENT OR FORBID ANY PERSON OR CORPORATION FROM OFFERING FOR LEGITIMATE SALE OR FROM LOWERING THE SALE PRICE OF WHATEVER GOODS OR SERVICES MAY BE COMMERCIALLY TRADED.

This idea was first suggested by Milton Friedman. All it says is that consumers deserve the lowest prices possible, and the government should not obstruct competition in any way.

FOR INFORMATION WRITE TO THE COMMITTEE, BOX 4691, CHICAGO 60680

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A pending case of first impression by citizens against a State agency which is acting to deprive citizens of their right to vote on obligations and bonds is now reaching trial stage in Ventura. Demurrers and motions to dismiss have been denied by the Court. Plaintiff citizens need financial help to continue and establish landmark precedent liberating human beings from shackles of arbitrary regulation and taxation by local agencies.

Full details available to you or your counsel — but prompt help is needed to proceed effectively. Citizens Lawful Rights Assoc., C.A. Miketta, Chairman, 6323 Upland Road, Camarillo, Calif. 93010 (805- 482-2554).

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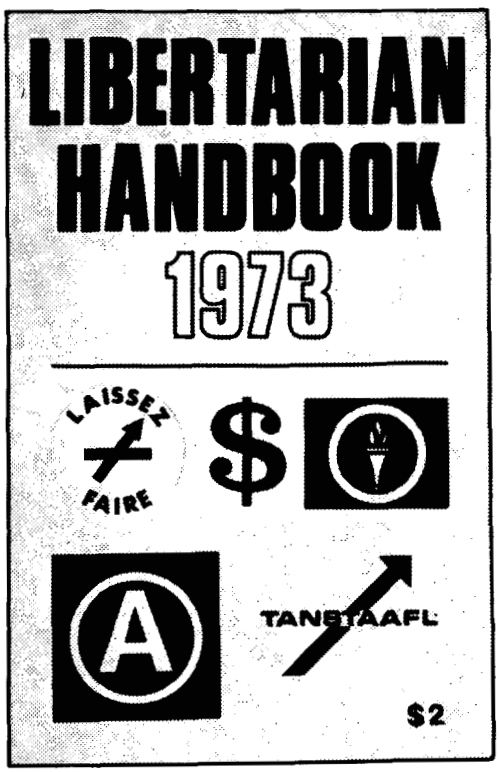

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One of the original aims of *REASON* Magazine was to significantly advance the spread of libertarian ideas in our culture. Although *REASON* has become the largest-selling libertarian magazine, its readership is largely confined to those who are familiar with the libertarian world-view. *REASON* is now in a position to begin a major promotion campaign aimed at non-libertarians.

To conduct such a campaign requires large amounts of capital. Although *REASON* is on sound financial footings in terms of current operations, large promotional efforts will require outside funding. Our first thought was to offer shares of stock in Reason Enterprises to our subscribers. Indeed, many subscribers have written asking if they could invest in *REASON.*

However, Big Brother, ever mindful of the welfare of "innocent investors," has established the Securities and Exchange Commission (SEC) to police the offering of securities. Virtually any offer of stock in Reason Enterprises would be subject to SEC registration requirements. Moreover, merely to solicit loans from our readers (which we would like to do) would also constitute an offering of securities within the broad definition of the Securities Act of 1933. Our lawyer has estimated the cost of SEC registration at $35,000 . . . obviously beyond our means. So the problem remained: how to raise promotional capital from people who understand and support our aims, without running afoul of the State?

The answer, we concluded, was to set up an organization which our subscribers could join and which would provide unique, tangible benefits in return for membership contributions. Thus, we recently announced the formation of **REASON ASSOCIATES,** a new division of Reason Enterprises. Reason Associates consists of *REASON* subscribers and friends who are seriously interested in spreading libertarian ideas.

Reason Associates has three classes of membership: *Regular memberships* costing $25 per year, *Supporting memberships* $50 per year, and *Sustaining memberships* $100 (or more) per year. Memberships may be purchased at these prices either by individuals, or couples. All members will receive a *membership card* (for admission to special events and tours), a handsome *membership certificate,* and a free one-year *gift subscription* (for the person or institution of their choice, e.g., your favorite library).

In addition, Regular Members receive a free *autographed* copy of the new Reason Press paperback edition of John Hospers' *LIBERTARIANISM,* while Supporting Members receive the autographed hardcover edition. For Sustaining Members Reason Associates provides an exclusive *bound edition* of Volume III of *REASON* Magazine. As our dwindling supply of back issues permits us to produce a limited quantity of these volumes, they are available on a first-come/first-served basis.

Charter flights and social activities are the most exciting aspects of Reason Associates. A recent election night Libertarian Party party certainly demonstrated the benefits of gathering for social purposes. The editors have been working with Small World Travel Agency of Los Angeles to secure the most up to date information on the rapidly changing charter flight opportunities. Members of an organization, such as Reason Associates, for at least 6 months are eligible for best rates (save up to 50% on air fare plus numerous ground arrangements at no cost or highly reduced price). Early participation necessary to receive these advantageous rates as CAB requires participant list 90 days prior to departure. Many possibilities are being considered, including 7-day trips within the North American continent and perhaps Mexico . . . 10-day trips outside North America—perhaps a visit to European Libertarians . . . combination conference and vacation in Southern California during February . . . Rent-A-Yacht getaway for evening or weekend . . . regionally arranged weekend getaways.

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